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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 CHEVRON CORPORATION,

4 Plaintiff,

5 v.

11 CV 691 (LAK)

6 STEVEN DONZIGER, ET AL.,

7 Defendants.

8 -----x

New York, N.Y.  
December 21, 2012  
9:30 a.m.

10 Before:

11 HON. LEWIS A. KAPLAN,

12 District Judge

13 APPEARANCES

14 GIBSON DUNN & CRUTCHER

15 Attorneys for Plaintiff Chevron

16 BY: RANDY M. MASTRO

CHRISTOPHER M. JORALEMON

17 ANDREA E. NEUMAN

JASON STAVERS

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20 BY: LARRY R. VESELKA

21 KEKER & VAN NEST, LLP

Attorneys for Defendant Donziger

22 BY: MATTHEW WERDEGAR

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(In open court)

THE COURT: Good morning, everybody. I guess you folks from out of town got maybe a 40-minute taste of what Hurricane Sandy was like, but a little bit milder than Hurricane Sandy. I never saw water come in through closed windows before.

Now, would I be right in guessing that the folks at the back table have airplanes they want to make sometime today?

MR. VESELKA: Yes, your Honor.

THE COURT: Tell me what your timing is.

MR. WERDEGAR: Your Honor, I have a --

THE COURT: Because if I can, I want to accommodate you.

MR. WERDEGAR: Thank you. I have a 5:30 flight. Given holiday and how the airport was getting here, I am hoping to get out of here -- I would be hopeful that we can do the Donziger motion and get it done optimistically by lunch. I think Mr. Veselka has a slightly later flight.

MR. VESELKA: My flight is sometime after 7:00 this evening. I booked the last one to make sure I would get home.

THE COURT: So we'll take them in that order. I don't know what is going to happen in light of the weather, but I did have a luncheon commitment. If that vanishes, we'll take a very short lunch to try to get you out. We'll go from there.

I also want to say to everybody that the format in the

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1 way in which these joint reports were presented were enormously  
2 helpful. I don't know how we would get through this any other  
3 way anything approaching the same amount of time.

4 MR. MASTRO: Thank you, your Honor.

5 THE COURT: So let's start out with Mr. Donziger's  
6 piece of this.

7 MR. MASTRO: Your Honor, just one piece of good news  
8 in the hope springs eternal category.

9 THE COURT: You settled the case?

10 MR. MASTRO: Your Honor, that would be beyond the  
11 holiday season. We did meet last night, have a meet and confer  
12 on those several issues that your Honor pointed out during the  
13 hearing that we should meet and confer and we did reach an  
14 agreement on them and we will be submitting to the Court a stip  
15 that resolve those issues.

16 THE COURT: Great.

17 MR. MASTRO: Just to be clear your Honor requested at  
18 the beginning of the day yesterday that we provide as to our  
19 motion to compel a comprehensive list of how each issue was  
20 resolved, including the ones resolved before we got to your  
21 Honor. Do you want that, your Honor, as every request and how  
22 it is being responded to, or just the ones that were part of  
23 the original motion including your rulings yesterday and the  
24 ones that got resolved before we got here? Whatever you would  
25 like it.

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1           THE COURT: I would like to have an order, a draft  
2 order resolving the motion to compel, which would embody in one  
3 part everything that you agreed upon which will wind up being  
4 so ordered but which are moot in terms of the motion to compel  
5 from the standpoint and of whether I have to decide other than  
6 approving your agreement and then the second part giving my  
7 adjudications --

8           MR. MASTRO: Got it, your Honor.

9           THE COURT: -- as to those items that remained in  
10 dispute.

11          MR. MASTRO: Got it.

12          THE COURT: Then we'll do the same on the other  
13 motions.

14          MR. MASTRO: Got it. The only thing that would not be  
15 addressed therefore would be the Ecuadorian agency issues,  
16 which I gather your Honor will decide.

17          THE COURT: And the timetables.

18          MR. MASTRO: The timetables.

19          THE COURT: The timetables will have to be addressed.

20          MR. MASTRO: They are.

21          THE COURT: If they can be worked out, from your lips  
22 to God's ears. If they cannot, you will put in blanks and I  
23 will work out the dates.

24          MR. MASTRO: One other thing in regard to agency, I  
25 think they are going to be resolved separately, but I wanted to

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1 point out to the Court other counsel have worked with them who  
2 we subpoenaed, Kohn and Garr, we have motions pending as to  
3 their productions, arguably has implications for the  
4 defendant's productions too as to whether those are persons  
5 they should be producing documents from.

6 THE COURT: Well, I am just not going there right now.

7 MR. MASTRO: Understood, your Honor.

8 MR. WERDEGAR: Your Honor, on the timetable issue at  
9 least as to the parties present here today, I believe we worked  
10 out a stipulated schedule to address further production of  
11 documents and the like. I think we're waiting for -- I believe  
12 we are waiting for confirmation from Stratus's counsel who have  
13 not been at this hearing but it has been sent off to them  
14 asking them to confirm that they also agree. So we should be  
15 able to submit that very shortly.

16 THE COURT: Without committing myself irrevocably, I  
17 think it will be reasonable to assume you will get a decision  
18 on what you are referring to as the agency issue in January.  
19 It might conceivably come in two pieces. It might come in an  
20 order which will be the bottom line followed by an opinion.

21 MR. MASTRO: Understood, your Honor.

22 THE COURT: I am still working on that and I haven't  
23 decided what I want to do. So let's go with Donziger motion.  
24 I suppose you will use the same format we used yesterday.

25 MR. WERDEGAR: We did, your Honor. The way the joint

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1 chart is here we had a series of exhibits attached to our  
2 motion to compel that were organized by subject matter. This  
3 joint report now a number of those exhibits it jumps from two  
4 to four and so on because we resolved the issues as to some of  
5 the subject matter. That is why when you look at the joint  
6 report, it goes from two and then the three and then there is a  
7 jump to seven because we resolved four, five and six in our  
8 subsequent meet and confer.

9 THE COURT: So we are starting with Exhibit 2 to the  
10 document 655, which is the joint report on the Donziger motion.

11 MR. WERDEGAR: Yes, your Honor.

12 THE COURT: I am all ears.

13 MR. WERDEGAR: With respect to Exhibit 2, this is  
14 addresses generally to Chevron's contacts and relationships and  
15 payments to the Ecuadorian military and the request at issue  
16 here are Requests 40 through 43 and they seek information about  
17 documents concerning communications with and documents  
18 concerning payments made to two different individuals Manuel  
19 Bravo and Arturo Velosco. Manuel Bravo we understand is a  
20 Chevron security operative and/or former military officer and  
21 the evidence that we have to date indicates that he on behalf  
22 of Chevron engineered the cancelation of the judicial  
23 inspection at the Guanta station and he did so by getting Major  
24 Arturo Velosco of the Ecuadorian military to submit an  
25 affidavit regarding security concerns which was then used as a

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1 basis to cancel that inspection.

2 This is what we do know: The dispute here -- Chevron  
3 is offered to produce documents concerning other communications  
4 and other payments with these two individuals involving the  
5 judicial inspections. We think that limitation is too narrow,  
6 your Honor. There are lots of other instances where the  
7 Ecuadorian military we believe did involve itself in the  
8 litigation and certainly there is no reason why this should be  
9 limited just to the judicial inspection process. We know that  
10 there was these contacts. We know that Chevron had a  
11 relationship with the Ecuadorian military. There is evidence  
12 and we have reason to believe that the military was used to  
13 interfere with proceedings during the course of the litigation.

14 So we're asking for all evidence regarding payments to  
15 these individuals and all documents concerning communications  
16 with them. We think that is a reasonable -- it is just these  
17 individuals that are in dispute and we think that is a very  
18 reasonable bound of discovery.

19 THE COURT: Did you say it is just these two  
20 individuals?

21 MR. WERDEGAR: Well, we're asking about all  
22 communications -- yes, Manuel Bravo and then Arturo Velosco.  
23 Manuel Bravo was the security operative and Velosco Major who  
24 assisted Chevron.

25 THE COURT: Mr. Mastro.

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1 MR. MASTRO: Your Honor, my colleague Chris Joralemon  
2 is going to be addressing the defensive issues.

3 MR. JORALEMON: Good morning, your Honor. Chris  
4 Joralemon.

5 THE COURT: Are you named after the street or are you  
6 named after the street?

7 MR. JORALEMON: It is the former actually.

8 THE COURT: Paid for by the New York City Board of  
9 Education.

10 MR. JORALEMON: That's right, yes.

11 I think it might be useful for the Court to set the  
12 context of these disputes concerning defendant's request of  
13 Chevron. How did we get here today? And this will take a  
14 minute. As of now defendants have served over 800 requests for  
15 production on Chevron and Chevron has produced in excess of  
16 three million pages in counting. Throughout the extensive meet  
17 and confer process as your Honor knows and as commented on  
18 Chevron has made a series of comprised proposals that  
19 contemplated producing a slew of materials that if they are  
20 relevant at all, they are out of the margins. All of this was  
21 with the goal of not burdening your Honor with these tangential  
22 disputes about discovery.

23 THE COURT: Boy, I am glad we haven't had any of  
24 those.

25 MR. JORALEMON: Yes, amazing. Which brings us to the



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1 issues that are being teed up today. I want to apologize in  
2 advance for repeating myself often because the Court is going  
3 to hear me say either this isn't relevant to any party's claims  
4 or defenses or --

5 THE COURT: Please spare me the rhetoric. The  
6 rhetoric on both sides is perfectly understandable, but let's  
7 get to the point.

8 MR. JORALEMON: So this is the basic question about  
9 Exhibit 2: Are these requests within the scope of permissible  
10 discovery on Rule 26 or to use Mr. Veselka's language from  
11 yesterday are these mere fishing expeditions.

12 THE COURT: Those are not mutually exclusive  
13 categories is one of the problem with the rhetoric.

14 MR. JORALEMON: So let's talk about the background.

15 THE COURT: A fishing expedition is a request for  
16 discovery that you don't want to give up and something that is  
17 relevant is something that you think might be useful.

18 MR. JORALEMON: Right. The background here, your  
19 Honor is the Guanta station inspection.

20 THE COURT: I know. I know the background. I read  
21 the pleadings. Believe me I don't know as much about this case  
22 as the folks at counsel table, but I know about this case.

23 MR. JORALEMON: Your Honor knows quite a bit, yes. So  
24 chevron has offered to produce in response to these four  
25 requests not only Guanta payments or discussions but any

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1 judicial inspection. So if you look at Donziger's joint  
2 submission, he admits that he is guessing here. It says, Such  
3 communications may disclose other attempts or tactics by  
4 Chevron to use the Ecuadorian military to help sabotage or  
5 derail litigation.

6 THE COURT: Let me save everybody repetition on my  
7 part. I don't know what happened in Ecuador exactly. Though,  
8 as the years have gone by, I am learning more and more. I have  
9 said very near the first day of this case that I did not assume  
10 that anybody's hands were entirely clean, not in the sense that  
11 phrase is used in the legal doctrine but in a more colloquial  
12 sense, and at some point along the way I made a comment I think  
13 probably in a written opinion that there is something to be  
14 said for letting the sunshine in on the process.

15 Now, there have to be limits of this case or we're  
16 going to try the history of the Republic of Ecuador, the  
17 Texaco, the Chevron oil company and Mr. Donziger's life story  
18 and there is no end to it. I fully understand that, but there  
19 is fundamentally in this case in contention that there was a  
20 whole lot of going on in relation to the Lago Agrio litigation.  
21 I am certainly very familiar with what Chevron claims happened  
22 and I understand in general what the defendants here,  
23 plaintiffs there claimed happend and one of the things they  
24 claim is that Chevron was using whatever political influence it  
25 had in Ecuador to try to get a favorable result in that case.

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1           There is a specifics allegation with respect to the  
2   Guanta judicial inspection. I understand that. I understand  
3   there are no specific allegations of particular instances  
4   beyond that, which may not be entirely surprising because, A,  
5   nothing else may have happened, or B, something may have  
6   happened and they don't know about it because how would they  
7   know most of the time.

8           My basic approach here is let's see what the facts  
9   are. So they are asking you for documents relating to these  
10  two former Ecuadorian or maybe one former one at the time and  
11  one present Ecuadorian military types. They picked these two  
12  because of the involvement whatever happened right, wrong or  
13  indifferent with respect to the Guanta inspection and I don't  
14  see why as a general proposition that isn't a reasonable  
15  approach on their part.

16          Now, that said we all understand that a lot of very  
17  high-priced lawyers, which is not in my view pejorative because  
18  I was one of them a long time ago and I am not against lawyer  
19  earning a living, even a good one, who spent an enormous amount  
20  of care and attention trying to draft document requests like  
21  trust indentures with all sorts of little exemplars of legal  
22  drafter's skill to make sure they get this and don't get --  
23  well, they always want more of course -- make sure what they  
24  get what they are really hoping to find and then the objections  
25  and the compromises are crafted to look as reasonable as

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1 possible without giving up the crown jewel. I got all of that.

2 So if there are little drafting things that you think  
3 I may have overlooked with respect to these requests, and I  
4 understand little drafting things can sometimes be very  
5 expensive to deal with if they are not caught, let's get to it.  
6 But the basic proposition about what if anything happened with  
7 respect to the Lago Agrio litigation between Chevron on the one  
8 hand and Bravo and Velosco, that ship has sailed in my mind.

9 MR. JORALEMON: Understood, your Honor. There is one  
10 point of clarification with respect to Request 41. This  
11 basically seeks information about payments from Chevron to  
12 Mr. Bravo. Mr. Bravo worked for a private security company and  
13 was contracted by Chevron to provide securities to its lawyers  
14 essentially down in Ecuador.

15 THE COURT: I hope he hasn't been in Benghazi lately.

16 MR. MASTRO: For all intents and purposes he was a  
17 bodyguard for Chevron lawyers. Now, this request seeks his  
18 salary in that role.

19 THE COURT: So?

20 MR. JORALEMON: We would argue that is beyond the  
21 scope of any discoverable information here.

22 THE COURT: One man's salary is another guy's hush  
23 money. I am not saying that is what happened here. Suppose  
24 this bodyguard was getting paid \$700,000 a year. It might have  
25 a bearing, don't you think? I just don't know. Maybe you are

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1 paying him on a W-2 and his Sally was \$78,000 a year and that  
2 was totally fair, reasonable and adequate compensation and then  
3 it is a nonissue. I don't mow what salary means. It is just  
4 what I am talking about when I talk about the draftsmanship.

5 MR. JORALEMON: Exactly. Could we limit this request  
6 to documents sufficient to show the amount and purpose Chevron  
7 made payment to Mr. Bravo?

8 THE COURT: What do you say, gentlemen?

9 MR. WERDEGAR: Well, your Honor, I guess my concern  
10 always is -- it is a reasonable proposal except my concern is  
11 what a document doesn't shows in their minds versus what we  
12 would like to see. We would want to know when he was paid and  
13 when and we would like to have produced or logged if they claim  
14 privilege communications. Say there was the \$700,000 payment  
15 and there was an internal discussion by Chevron, you know, we  
16 need to quiet this guy down and do X and Y, we would like to  
17 see those documents.

18 THE COURT: Why isn't an appropriate resolution of  
19 this very narrow point that you get documents sufficient to  
20 show all payments, the dates of all payments and the stated  
21 purposes of all payments and if that raises any questions in  
22 your mind, you come back? How about that?

23 MR. JORALEMON: That certainly makes sense, your  
24 Honor.

25 MR. WERDEGAR: I mean, your Honor, I guess again if

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1 the stated purpose is just an invoice that says "salary," that  
2 would be the stated purpose I guess, but that would leave out  
3 any kind of internal communications which are explaining what  
4 is really going on here.

5 THE COURT: I understand that. Look, if what you get  
6 back here -- this is what I was talking about about the  
7 drafting. Look, I admire good legal drafting as well as the  
8 next guy. You're concerned that there are all kinds of odd  
9 payments here, there and the other place and if all you get is  
10 a list of the payments and the dates and for example invoices  
11 such as you indicate, well then where are you? You have  
12 something that looks kind of suspicious from your point of view  
13 and you haven't really learned all that much about what was  
14 really going on if anything.

15 On the other hand if what you get back is a listing  
16 that for whatever period of time he was employed by Chevron he  
17 got a check every two weeks in substantially the same amount  
18 with maybe a 4 percent raise each year and it says "salary" and  
19 the amount is reasonable, I think I said that, you would agree  
20 with me that that is the end of that issue, right?

21 MR. WERDEGAR: Yes, your Honor. The only point I  
22 would add if that were the scenario, there is unlikely there  
23 would be any internal correspondence anyway so there would be  
24 nothing for them to produce. So there would be nothing else in  
25 any event whether that be produced. They presumably know who

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1 at Chevron was contacting this company, the point person. It  
2 is a matter of searching their e-mails to see what kind of  
3 communications they are having about this guy. It is not a  
4 burdensome search in our view.

5 THE COURT: How burdensome is it, Mr. Joralemon?

6 MR. JORALEMON: Well, it is potentially very  
7 burdensome, your Honor. That would pick up every -- if there  
8 is a person processing payroll, every time that person makes  
9 communication about the act of processing payroll that would  
10 pick up that communication. So I don't know off the top of my  
11 head the tenure of Mr. Bravo's role but--

12 THE COURT: How long has he been there?

13 MR. JORALEMON: I don't know, your Honor. Again, he  
14 didn't work for Chevron. He worked for a private security  
15 company.

16 THE COURT: Well, then is it that company still works  
17 for Chevron? Where is that company?

18 MR. JORALEMON: They are located in Ecuador.

19 THE COURT: So how was the payroll handled? That is  
20 to say, did you get a bill every month from the security  
21 company that said for security in the month of April, \$14,000,  
22 or was this on the payroll of an entity within Chevron's  
23 purview?

24 MR. JORALEMON: It definitely is not the latter. He  
25 worked with a company that contracted with Chevron. There is a

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1 contract between his employer and Chevron to provide security.

2 THE COURT: So the payroll processing stuff is not  
3 likely to be at Chevron, right?

4 MR. JORALEMON: Not within that company, correct.

5 THE COURT: What company?

6 MR. JORALEMON: The security company that Mr. Bravo  
7 worked for.

8 THE COURT: So it is sounding to me if there is a  
9 burdensome part here, the burdensome part in terms of routine  
10 weekly communications about processing the payroll are at the  
11 security company?

12 MR. JORALEMON: Again, your Honor, the burdensome part  
13 would come in where we're searching for whoever was within  
14 Chevron's control was interfacing with the security.

15 THE COURT: Are you saying the security company might  
16 have been within your control?

17 MR. JORALEMON: No. No.

18 THE COURT: I am going to allow this one. It doesn't  
19 sound to me like it is a big deal from Chevron's point of view  
20 in terms of burden or tedium with no upside benefit. And to  
21 the extent you got stuff in your possession, custody or control  
22 relating to this for the reasons I have given, they are going  
23 to get them.

24 Anything else on this group, Exhibit 2?

25 MR. JORALEMON: No, your Honor.



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1 THE COURT: Exhibit 3.

2 MR. WERDEGAR: Exhibit 3 is similar but this focuses  
3 on communications with and payments to the Republic of Ecuador  
4 and politicians and to influence politicians and political  
5 operatives in the Republic of Ecuador, your Honor. That is the  
6 general overarching. I think some of the issues with the  
7 requests are a little bit specific and we probably need to go  
8 through them one at a time. The first, Request 25 is looking  
9 for communications between Chevron and any person acting on  
10 behalf of the Republic of Ecuador putting aside public  
11 pleadings or filings in any U.S. court or Ecuadorian court. So  
12 it is the non-- the ex parte type communications. The issue  
13 here is they agreed to produce documents --

14 THE COURT: Can you answer one question about this  
15 request for me? I see that it is communications concerning the  
16 Aguinda litigation, which is a defined term.

17 MR. WERDEGAR: Yes. That is the New York litigation,  
18 your Honor.

19 THE COURT: That is what I thought.

20 MR. WERDEGAR: Yes. That is the issue. So Chevron  
21 has taken the position that anything to do with the Aguinda  
22 issue in New York, what we believe to be extensive behind the  
23 scene efforts to get Chevron -- Ecuador to try intervene in  
24 that litigation or have it moved to Ecuador and have it  
25 favorable treatment when it got to Ecuador, Chevron's view is

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1 that that is irrelevant as to this lawsuit and we certainly  
2 disagree with that.

3 First of all, in terms of the relevance Chevron in its  
4 own complaint, its affirmative allegations in the story it  
5 tells, that story starts with the filing of the Aguinda  
6 litigation in New York. They accuse of my clients of being in  
7 collusion with Republic of Ecuador from day one. This is  
8 evidence that goes to disproving those allegations in Chevron's  
9 complaint, the affirmative allegations that they have in their  
10 complaint about the collusion between --

11 THE COURT: Where in their complaint do they say that?

12 MR. WERDEGAR: It's paragraph 60 through 63, your  
13 Honor. Also 70 through to 75 is directly on point with  
14 collusion with Ecuador. That collusion began according to them  
15 during the course of the Aguinda litigation.

16 THE COURT: Is that right, Mr. Mastro, before I look  
17 it up?

18 MR. MASTRO: Your Honor, I don't think that is  
19 accurately characterizes it. There are allegations about  
20 Aguinda and that being the start of the disputes.

21 THE COURT: The reason I question it is quite simply  
22 this: The logic of what you are saying is that Chevron  
23 litigated in this court and in the Second Circuit in the  
24 Aguinda case from 1993 to 2001 to get the litigation moved to  
25 Ecuador where allegedly you were in bed with government of

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1 Ecuador. They have been accused of a lot of things, but a  
2 desire to commit suicide is not one of them I think.

3 MR. WERDEGAR: Your Honor, I would direct you to those  
4 paragraphs I just referenced, 60 through 62. They have the  
5 allegations that we were, that is Chevron, working to get the  
6 case dismissed and sent to Ecuador. According to Chevron,  
7 Donziger and the Ecuadorian plaintiffs side of the case were  
8 working -- were colluding with the government to get the  
9 Environmental Management Act passed, were doing various things  
10 to set up a favorable playing field in Ecuador. That is their  
11 theory.

12 THE COURT: Oh, yes, that I remember.

13 MR. MASTRO: That's a little different than what he  
14 said before. Colluded from day one is what he said before.

15 MR. WERDEGAR: The transcript will reflect what it  
16 says, but that is what their allegation -- their allegations  
17 about their collusion date back to the 1990s.

18 THE COURT: Their allegation about collusion with  
19 respect to the passage of the EMA, yes, absolutely; but they  
20 certainly weren't as your remarks led me to believe whether  
21 inadvertantly or otherwise, and I am not casting aspersions,  
22 and what I said before they were certainly not trying to move  
23 this litigation to Ecuador where you were in collusion with the  
24 Ecuadorian government in the broad sense that I understood you.

25 MR. MASTRO: And your Honor will recall the EMA issue

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1       arose after there was the commitment on Texaco's part to try to  
2       move the case.

3               THE COURT:   Yes, indeed.   It may even have been after  
4       the case had been dismissed once in favor of Ecuador.

5               Isn't that right, Mr. Werdegar.

6               MR. WERDEGAR:   I believe the EMA --

7               THE COURT:   EMA is 1099 and didn't Judge Rakoff  
8       dismiss it the first time earlier than that?

9               MR. WERDEGAR:   It was still being litigated in the  
10       United States.   You are correct, your Honor.

11              THE COURT:   So let's go on.

12              MR. WERDEGAR:   Go on to the next request?

13              THE COURT:   No.   No.   So far you haven't explained the  
14       relevancy of this to me satisfactory.

15              MR. WERDEGAR:   Well, so the one relevance is with  
16       respect to their allegations.   We discussed that.   The other  
17       relevance is with respect to what you described, your Honor, as  
18       it is Donziger's belief and our position of this litigation as  
19       reflected in our counterclaims as well as our affirmative  
20       defenses that Chevron as you described has in our theory been  
21       engineering -- trying to engineer the transfer of the case to  
22       Ecuador because they believe it would receive favorable  
23       treatment there and were working both during that period of  
24       time and --

25              THE COURT:   What you mean by engineered the transfer

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1 of the case is filing a motion in this court before a United  
2 States district judge to dismiss it on the ground that Ecuador  
3 is a more convenient forum, right?

4 MR. WERDEGAR: With certain specific promises, your  
5 Honor.

6 THE COURT: Right. But that's engineering?

7 MR. WERDEGAR: Fair enough, your Honor. Fair enough.  
8 Their goal was to get the case to Ecuador.

9 THE COURT: No question it.

10 MR. WERDEGAR: It used the legal processes available  
11 to do so and also made various representations which have been  
12 the subject of many pleadings in this case.

13 THE COURT: History plays games with people and one of  
14 the great games in all of this is that the trip to Ecuador  
15 turned out 180 degrees opposite what each party thought when  
16 they took their positions about whether that should happen. I  
17 understand all that.

18 MR. WERDEGAR: So it's our view, and I think there is  
19 evidence that we know about that supports this, that throughout  
20 that period of time and then continuing throughout the  
21 Ecuadorian litigation Chevron has been endeavoring to use  
22 whatever political influence it has in Ecuador to in that case  
23 I believe the appropriate verb would be engineer a favorable  
24 outcome of the case.

25 THE COURT: Let me assume that's right. Suppose it's

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1 right.

2 MR. WERDEGAR: I think we're entitled, your Honor, in  
3 telling that story to be able to put that story in context to  
4 show how this is a pattern and practice of Chevron's over  
5 multiple years in dealing with this lawsuit and it shouldn't  
6 artificially --

7 THE COURT: Suppose that's right. Suppose that's  
8 right. How does that give rise to any claim or defense in this  
9 case?

10 MR. WERDEGAR: Well, your Honor, it gives rise to our  
11 unclean hand -- as it relates to our unclean hands defense.

12 THE COURT: Well, your unclean hands defense consists  
13 three words: Unclean hands, dismissed. I looked at the  
14 pleading again this morning. Your unclean hands defense says  
15 nothing. It is like an index heading in the back of a torts  
16 book or something.

17 The people who have spelled out or made an attempt to  
18 spell out an unclean hands defense is Mr. Veselka's clients  
19 which led to a motion to strike it, which led to a decision  
20 that I spent a lot of time on.

21 Now, is the substance of your proposed unclean hands  
22 defense any different from the one that they alleged your  
23 client's clients?

24 MR. WERDEGAR: Based on the information available to  
25 us, it is very similar. I think it also would be amplified by

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1 whatever evidence comes to light since that time, but it  
2 certainly is similar for us.

3 THE COURT: Now, the part of their unclean hands  
4 defense that I allowed to go forward with respect only to the  
5 prayer for and injunction was very narrow and I explained why.  
6 I allowed to go forward that part of it which was based on  
7 allegations of misconduct in or in relation to the Ecuadorian  
8 litigation and that is because -- and I am looking for the  
9 quote here. It is not leaping off the page at me -- there has  
10 to be a close relationship. Here I have now found it. There  
11 has to be an immediate and necessary relation to the equity  
12 that the plaintiffs seeks in respect of the matter in  
13 litigation in order for an unclean hands defense to be viable.  
14 I cited for that Specialty Minerals v. Pluess-Staufer, 395  
15 F.Supp.2d 109, at 112.

16 Now, the rationale that I took there was if and to the  
17 extent Chevron is seeking injunctive relief in this case in  
18 relation to the Lago Agrio judgment, misconduct with relation  
19 to that litigation by Chevron is at least arguably related to  
20 the equity they are seeking to enforce. There may well have  
21 been misconduct all around with respect to the earlier New York  
22 litigation. I don't know. But assuming that there was, I  
23 don't see its relationship as being sufficiently tied to their  
24 claim for injunction here with respect to the Lago Agrio  
25 judgment and litigation to make it viable here.

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1 MR. WERDEGAR: Can I try to stay it one more way?

2 THE COURT: Please do.

3 MR. WERDEGAR: Certainly with respect to the scenario  
4 outlined in your order and any misconduct by Chevron with  
5 respect to the litigation in Ecuador would have a relevance so  
6 too would we believe that kind of conduct have relevance to our  
7 defense Chevron's affirmative claims. They accuse of improper  
8 pressure, collusion, doing all these bad deeds. In our view  
9 any alleged conduct has to be viewed in the context of us going  
10 down there. If we are going to meet with a judge not to try  
11 and bribe him but because we think Chevron has just bribed him  
12 and we are trying to see what is happening, those are two  
13 different scenarios and you cannot tell the story of the  
14 alleged misconduct of Mr. Donziger without knowing what was  
15 going on in the overall context of the litigation because  
16 context I think would be very, very important.

17 Now, that said with respect to this, if there are  
18 people that Chevron is communicating with at length during this  
19 period leading up to the case moving to Ecuador, having  
20 extensive meetings, contacts, payments being made to them  
21 perhaps, whatever it may be, we see that history of Chevron's  
22 relationship with them and then suddenly those people are  
23 actors that are important during the course of the Ecuadorian  
24 litigation. Chevron is continuing to meet with them. A  
25 meeting in 2004 by itself, that is all we know about, could be



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1 very innocuous; but if you know a history of this, it could  
2 take on a very different light. So to put all of this into  
3 context I think we need to understand this case didn't pop out  
4 of the blue, a relationship with Ecuador didn't pop out of the  
5 blue in 2003 when it was filed in Ecuador and Chevron's  
6 interactions with these people didn't start then. I think  
7 we're entitled to explore the nature of the relationship and  
8 who Chevron has been working with and trying to influence  
9 during the entire span of this litigation.

10 THE COURT: Mr. Joralemon.

11 MR. JORALEMON: Very briefly, your Honor.  
12 Respectfully to Mr. Werdegarr we fail to see the nexus between a  
13 conversation that Chevron may have had 20 years ago about a  
14 lawsuit filed in New York with Mr. Donziger and his cohorts  
15 ghost wrote the report or judgment. There is no connection.  
16 For Mr. Werdegarr to suggest that a conversation Chevron may  
17 have had with the ROE will impact Mr. Donziger's state of mind  
18 about the Cabrera file or the ghost writing judgment frankly  
19 makes no sense.

20 MR. WERDEGAR: One last word if I may. If this case  
21 were about-- if Chevron's allegation were just the Cabrera  
22 report and ghost writing that would be make this case a whole  
23 lot simpler, but that is not what they are complaining. Their  
24 complaint goes far beyond that. They talk about collusion,  
25 about ex parte meetings, bribing judges. That's all there.

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1           THE COURT: That's all in relation to the Ecuadorian  
2 litigation.

3           MR. WERDEGAR: Correct, your Honor. If Mr. Donziger  
4 is meeting with someone -- and this is what we believe to be  
5 the case -- if he is meeting with someone, We have to go  
6 confront the judge, one of their famous quotes, if you gave  
7 that quote the full outtake that quote is going to confront  
8 them because they believe that Chevron -- that he was dirty and  
9 that Chevron had been interfering with him. That is the story  
10 we're entitled to tell and we're entitled to get documents from  
11 them regarding the nature of those contacts and relationships.  
12 I think that should go back to when the litigation began.

13           THE COURT: I am not saying whether Mr. Donziger's  
14 state of mind at a time when, assuming for the sake of argument  
15 it ever occurred, he engaged in some improper behavior with a  
16 judge in Ecuador is or is not relevant here. There is a nice  
17 question and maybe not even so hard, but there is a question  
18 anyway I recognize as to whether he is entitled to bribe the  
19 judge even if he genuinely believes the judge was bribed by  
20 someone else.

21           There is an old line about one of the problems with  
22 some people is not that they take bribes but that they don't  
23 stay bought. I have heard that line somewhere. I understand  
24 that argument. I am having a little trouble with the question  
25 of why you are entitled in effect to go back to the Aguinda

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1 case, which ended 11 years ago finally for the purpose of  
2 finding evidence that you hope Mr. Donziger could now say, Ah  
3 well, that proves I was right. If he is going to get on the  
4 stand and as proper evidence and say, Look, my understanding  
5 was the whole Ecuadorian judiciary was corrupt -- God knows he  
6 has said that -- and therefore I felt I had to fight fire with  
7 fire, and be subject to cross-examination as to what the basis  
8 of his knowledge was assuming the first part comes in at all,  
9 so be it. We have a trial.

10 MR. WERDEGAR: Your Honor, aren't we entitled to Mr.  
11 Donziger getting on the stand hypothetically speaking he is  
12 being examined or cross-examined about a meeting that takes  
13 place in the Aguinda case and he testifies, We thought Chevron  
14 was bribing this judge and we wanted to see and talk to this  
15 judge to see what was going on. I am not saying he was going  
16 there to bribe him --

17 THE COURT: I understand.

18 MR. WERDEGAR: -- confront him. He is entitled to  
19 give his own testimony and state of mind of the purpose of the  
20 meeting, but aren't we also entitled to corroborate that state  
21 of mind if we can show that there is documents that Chevron had  
22 interactions with this judge or this judge's former employer  
23 over a course of years that they had an established  
24 relationship.

25 THE COURT: I don't know and I am not going to rule on

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1 that now, but I will point out to you that everything you have  
2 talked about relates to what went on in the Lago Agrio  
3 litigation, not the New York litigation years before.

4 MR. WERDEGAR: Again, one last time, your Honor.  
5 Maybe this is I am beating a horse. The point is that --

6 THE COURT: Look, I want to get this right. Let's  
7 take some time on it.

8 MR. WERDEGAR: For discovery purposes and given the  
9 broad view of discovery, which Mr. Mastro discussed at length  
10 yesterday, I think we're entitled to find out the background.  
11 I am not saying at trial that something would happen in the  
12 Aguinda litigation would be admissible for unclean hands  
13 because it happened in the Aguinda litigation, but what I am  
14 saying is we're entitled to discovering about the  
15 communications and relationships that Chevron had established,  
16 tried to build with influence makers in Ecuador, which then  
17 they kept during the course of the Ecuadorian litigation but  
18 those relationships to understand them they will explain to the  
19 jury how Chevron had been working with these people and trying  
20 to establish its influence with them for years, those  
21 relationships -- and we know they were meeting with people all  
22 through the '90s about this case down in Ecuador with  
23 politicians and ministers -- we would like to be able to show the  
24 history of those relationships, the fact that Chevron had been  
25 working with and trying to influence those people for years and

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1 lo and behold come 2007, 2008 it was bearing fruit where  
2 Donziger had not --

3 THE COURT: It bore a lot of fruit, 19 billion  
4 dollars' worth of fruit.

5 MR. JORALEMON: If I may, your Honor. This is about  
6 line drawing.

7 THE COURT: I got that.

8 MR. JORALEMON: We're producing --

9 THE COURT: Even in baby judge school, I got that.

10 MR. JORALEMON: Now, what is getting lost in  
11 Werdegarr's statement is Chevron is producing all  
12 communications --

13 THE COURT: I am sorry?

14 MR. JORALEMON: We're producing all communications  
15 from the ROE about the Lago Agrio litigation.

16 THE COURT: Before we get to Mr. Veselka, which we  
17 will -- well, go ahead, Mr. Veselka.

18 MR. VESELKA: I apologize, your Honor.

19 THE COURT: You don't have to apologize. You are  
20 doing your job.

21 MR. VESELKA: This is his motion. I have a similar  
22 one. So when we get to mine, I have a precise --

23 THE COURT: I don't want to do this all twice. If it  
24 is overlap, I want to hear from you.

25 MR. VESELKA: That's what I assumed. There is already

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1 information or evidence or documents that reflect that the  
2 Chevron before Lago Agrio case is filed has relations and  
3 dealings with ROE such that as soon as it is filed they come  
4 down, they have meetings with the press, they have meetings  
5 with various ministers and they have meetings with the attorney  
6 general and they get the attorney general to call the judge to  
7 try to kill the case.

8 THE COURT: To call what judge?

9 MR. VESELKA: The judge presiding over the case, the  
10 Lago Agrio case. The background of what the relations in  
11 getting the case ultimately dismissed and approved by the  
12 Second Circuit what they were willing to say based upon what  
13 arrangements or understanding they thought they had with ROE,  
14 we think you have to back it up before the March 2003. I think  
15 that is why we're going back into Aguinda. Now, whether it has  
16 to go back to 1992, maybe not. We think that the dealings that  
17 were going on and trying to get the ROE to participate in the  
18 case and what arrangements they had to say, If we get it down  
19 there, we will be able to take care of it, we think it would be  
20 relevant particularly to the unclean hands and --

21 THE COURT: How can it be relevant to the unclean  
22 hands? So far as you are concerned, I have already ruled to  
23 the contrary. So that ship sailed where you are concerned. So  
24 what we're talking about is how is it relevant to Chevron's  
25 complaint and to Donziger's counterclaim? That is what we're

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1 talking about.

2 MR. WERDEGAR: Your Honor, one way to maybe cut  
3 through this is how when they say they are producing all  
4 communications with the Republic of Ecuador about the  
5 Ecuadorian litigation, my understanding is the time frame that  
6 they have selected to do that only goes back to 2003. So what  
7 we're trying to capture --

8 THE COURT: Nobody talked to me about the time frame  
9 on this. That was not a point anybody ever said was in  
10 dispute. I don't know whether what you said is right or wrong.

11 MR. WERDEGAR: What we're trying to do is there is a  
12 way to get communications to go back somewhat further in time  
13 and whether you call them about the Aguinda case in New York  
14 because that case is still going on or whether it is about  
15 planning for what Chevron hopes is going to happen in Ecuador.  
16 This is where the draftsmanship gets a little blurry, but I  
17 think what we're most interested in is what Mr. Veselka has  
18 described as Cheveron's efforts when they looks like they are  
19 getting the case moved to Ecuador to lay the groundwork for  
20 what they think is going to be a favorable outcome. So maybe  
21 shifting the timeframe back and with the understanding that is  
22 what we're looking for, that would satisfy us, your Honor. It  
23 doesn't need to go back to 1993.

24 THE COURT: What about that, Mr. Joralemon?

25 MR. JORALEMON: Certainly if it relates to the Lago

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1 Agrio litigation, your Honor, we're fine with that.

2 THE COURT: Well, that's filed when?

3 MR. JORALEMON: That's filed in early 2003.

4 THE COURT: Suppose it was the Aguinda litigation back  
5 to 2000 just to give an example?

6 MR. JORALEMON: So modifying the request --

7 THE COURT: Modifying the request to just have a time  
8 period on it, 2000 to 2003 or whatever. I guess it ends in  
9 2001.

10 MR. JORALEMON: That seems reasonable. How about the  
11 final end of the Aguinda litigation through that day?

12 THE COURT: Do we have a sale here or not?

13 MR. VESELKA: The concern is that they are willing to  
14 make commitments to the Second Circuit and Judge Rakoff about  
15 what will happen if they get it dismissed on forum non  
16 conveniens based upon agreements they have with the ROE of what  
17 will happen if the case is refiled. So if you wait until after  
18 all the commitments are made, that is why January 1st of 2000  
19 is something we had thrown out at one time I believe but it  
20 never got an agreement from them on that. I think January 1,  
21 2000.

22 MR. JORALEMON: That is the first I am hearing of the  
23 January 1, 2000 date. Again, we would be comfortable going  
24 back to the conclusion of the Aguinda case, having that being  
25 the kickoff communications about the Lago Agrio case.



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1           THE COURT: Look, I am going to sustain the objection  
2 to 25 to the extent it seeks documents prior to January 1, 2000  
3 and overrule it as to January 1, 2000 coming forward. That  
4 should not be understood as a relevancy determination as is  
5 always the case here.

6           MR. WERDEGAR: Understood, your Honor. The next  
7 request is Request No. 39, your Honor. This is seeking  
8 basically documents concerning payments Chevron has made to  
9 politicians, political figures, candidates in the Republic of  
10 Ecuador. This is not a time frame issue and the time frame  
11 here is during the course of the Lago Agrio litigation in  
12 Ecuador. We offered in a meet and confer to limit this to  
13 payments made for the benefit of any political party or  
14 candidate with whom Chevron has had communications regarding  
15 the litigation or regarding related issues such as remediation,  
16 the release, criminal charges.

17           So what we're looking for is who is Chevron talking to  
18 in Ecuador about these issues of concern to Chevron and is  
19 Chevron making payments to those people. It is a limited  
20 universe. Maybe they weren't talking to anybody in which case  
21 they don't need to produce anything. We do have a lot of  
22 evidence of communications between Chevron and politicians in  
23 Ecuador about this case. I think they have provided in  
24 interrogatories in that case that listed a whole slew of those  
25 meetings and communications.

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1 MR. JORALEMON: Your Honor, we are producing any  
2 payments to anyone listed in that interrogatory response. This  
3 issue is very narrow. During the meet and confer we asked him  
4 for any factual basis to suggest that Chevron was making  
5 political contributions in Ecuador.

6 THE COURT: Let me interrupt you.

7 Mr. Werdegarr, is it correct as Mr. Joralemon just said  
8 that they have undertaken to produce evidence of payments to  
9 anybody on the list and that the list is a list of everybody  
10 they communicated with about the Ecuadorian case?

11 MR. WERDEGAR: Your Honor, this actually is the first  
12 time I believe, and we had a lot of meet and confers, I heard  
13 that that I remember. I may have missed it, but that is the  
14 first time I heard that. As far as the list goes, I know there  
15 is an interrogatory response in Count 9 asking for it, but I  
16 don't know if there were limitations that Chevron placed in  
17 terms of its due diligence or what it was going be providing to  
18 that because we weren't part of that discovery directly.  
19 Certainly if the two premises you said are correct, your Honor,  
20 that goes a long way towards resolving this.

21 THE COURT: You guys work this one out.

22 No. 47.

23 MR. WERDEGAR: Your Honor, we're seeking basically the  
24 information to identify any bank accounts that Chevron used to  
25 make payments to political figures in Ecuador with whom it was

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1 simultaneously or having discussions about this litigation.

2 THE COURT: Well, given what Mr. Joralemon just said,  
3 it is my understanding that they are going to give you or have  
4 given you -- I am not sure which it is, but one or the other --  
5 a list of everybody that they met with in relation to the Lago  
6 Agrio litigation and any payments that were made to any of  
7 those people.

8 Now, why do you need the specific bank accounts for?

9 MR. WERDEGAR: Your Honor, I think if we get the  
10 information that he has represented, it would lead to the  
11 complete information to show the nature, the purpose and timing  
12 of all the payments and to whom and we probably don't need this  
13 additional information.

14 THE COURT: That one is gone.

15 MR. JORALEMON: Your Honor, for the sake of efficiency  
16 this is a subset of the issue raised by the LAPs. LAPs are not  
17 only seeking LAPs to ROE, they are seeking bank account  
18 payments to anyone, including Chevron's lawyers contractors,  
19 etc.

20 THE COURT: We'll get to that.

21 (Continued on next page)  
22  
23  
24  
25

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Hearing

1 THE COURT: OK. So, 47 is out. You'll work this out  
2 in the context of the Nascent compromise on number 39 and,  
3 fortunately, I hope nobody has to go to a party caucus to get  
4 this approved. OK. That takes care of Exhibit 3.

5 MR. WERDEGAR: Next is Exhibit 7, your Honor, and this  
6 relates generally to communications to and payments with  
7 experts involved in the litigation in Ecuador. And the  
8 defining term of experts it was intended to encompass everyone  
9 that we knew about on any side that had been an expert in the  
10 Lago Agrio litigation. But it's a little confusing because we  
11 referred to it as the New York action. So I want to make sure  
12 that's --

13 THE COURT: So Aguinda experts means New York?

14 MR. WERDEGAR: No. It means experts who participated  
15 in the trial in Ecuador, so poor drafting. I want to make sure  
16 there is no confusion on the outset of that.

17 We are seeking all of Chevron's communications,  
18 certainly, with any of the Court appointed experts in the  
19 litigation and then documents related to those communications  
20 as well as any communications they may have had with experts  
21 working with the plaintiff's side of the case and documents  
22 related to those communications. And then we are seeking  
23 communications pertaining to Chevron's communications with its  
24 testifying experts, those experts it hired and paid for that  
25 weren't Court appointed such as Cabrera.

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Hearing

1 THE COURT: Let's take the last group first. So what  
2 you now want to do is the trial's over, the judgment's there,  
3 it's affirmed on appeal and now you want discovery of what  
4 transpired between the losing party and the losing party's  
5 experts.

6 MR. WERDEGAR: Your Honor, this is relevant on several  
7 grounds. And it's relevant because first of all Donziger on  
8 its counterclaims. Chevron has said publicly and they vilify  
9 Donziger publicly on the grounds that all the legitimate  
10 scientific evidence that disproves this case in Ecuador that  
11 the contamination down there is not posing a human threat.  
12 They make these public statements repeatedly about the state of  
13 the scientific evidence down there. We have reason to believe  
14 and there's evidence to suggest that Chevron during the course  
15 of the Lago Agrio mitigation was manipulating the scientific  
16 evidence that was presented or not presented to the Court.  
17 There is evidence of them taking sampling from, selecting only  
18 clean sites and taking samples from other places and passing it  
19 off as sampling from the inspected sites. And we have a  
20 handful of internal communications between their experts  
21 expressing concern or speaking candidly about the evidence.  
22 And I think we're entitled to show first of all for the  
23 counterclaim purposes that when Chevron is saying the  
24 legitimate scientific evidence is "X" that they know that not  
25 to be true based on their own internal knowledge and

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Hearing

1 communications.

2 THE COURT: And let's suppose that happened. This  
3 injured Mr. Donziger how?

4 MR. WERDEGAR: He is being -- it's injuring him now  
5 because he is facing --

6 THE COURT: It wasn't "now". It was "how"?

7 MR. WERDEGAR: "How"? He is -- Chevron is in the  
8 process of trying to extort him, your Honor. The theory set  
9 forth in our counterclaim Chevron is using this public pressure  
10 and vilification campaign and these false statements to damage  
11 and destroy his reputation. He's been forced incur legal fees  
12 to defend against Chevron's false public statements about him  
13 and Chevron is endeavoring to isolate him to force him to  
14 abandon this case because he no longer can pursue is --

15 THE COURT: So he had to spend legal fees because they  
16 said all the legitimate scientific evidence says there's no  
17 pollution Ecuador? Is that why or might it have been because  
18 they sued him if, in fact, he incurred legal fees?

19 MR. WERDEGAR: Your Honor, he's incurred legal fees  
20 because they've sued him. And he's incurred legal fees having  
21 to investigate the falsity of Chevron's claims about him and  
22 about the scientific evidence and it's the same legal fees  
23 theory that Chevron case is premised on here. They claim that  
24 they've incurred legal fees investigating and uncovering the  
25 truth about Mr. Donziger in Ecuador. Mr. Donziger is incurring

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Hearing

1 legal fees in the very same way in terms of uncovering the  
2 truth. Chevron's found out -- about him about the scientific  
3 evidence, about the state of contamination, about that there's  
4 no health or human impact to the environment as a result of  
5 Texaco's operation.

6 THE COURT: So Chevron could file a supplemental  
7 complaint here saying that they're now incurring more legal  
8 fees as a result of the unfounded counterclaims -- this was  
9 their words, hypothetically -- that the pleadings you filed in  
10 this case are causing them --

11 MR. WERDEGAR: Your Honor --

12 THE COURT: -- would that be right?

13 MR. WERDEGAR: I'd have to research that. I'm not  
14 sure I could say that as a snap judgment. But it also goes  
15 directly to unclean hands, your Honor, putting aside the  
16 counterclaims. If Chevron on the one hand its experts are  
17 saying certain things to the Court. At the same time Chevron  
18 knows its experts know of scientific evidence that is different  
19 and less favorable for them and that is not being provided to  
20 the Court, that Chevron is a suppressing dirty samples, sending  
21 them to a secret laboratory. That is all directly related to  
22 Chevron's conduct of the litigation in Ecuador and goes to the  
23 heart of what I think your Honor's recognized to be a valid and  
24 unclean hands defense at least as alleged.

25 THE COURT: I actually said something a little

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Hearing

1 different but it is still in the case to a limited degree.

2 Mr. Veselka.

3 MR. VESELKA: We have similar issue RFPs as they go  
4 beyond just the communications with experts. They go,  
5 particularly, looking to things that may not have been  
6 communicated with the experts. But I think because it's the  
7 same issue of the relevance of the inquiry, if the Court wants  
8 to hear about that.

9 One of the founding blocks as the Court has recognized  
10 as mentioned in your opinion the other day and as Mr. Mastro  
11 read your words back to you yesterday about this is that this  
12 is a case about trying to extort money from Chevron by among  
13 other things, bringing the Lago Agrio litigation. That's that  
14 first component which they then refer to as "sham litigation"  
15 in one words or another, sham litigation, fraudulent  
16 litigation, objectively frivolous and fraudulent. As a  
17 demonstrative if the Court wants to see it, where we've  
18 highlighted the 15 times in the complaint where they use these  
19 characterizations about being sham litigations is one of their  
20 factual assertions and therefore their knowledge and/or their  
21 expert's knowledge about information about other testing, about  
22 other sampling, about work they had done not just in that case,  
23 if they'd done other work that they had knowledge of the  
24 pollution, if they had knowledge of the contamination, if they  
25 had knowledge of the deleterious public affects on



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Hearing

1 Mr. Cammacho, Mr. Piaguaje and other folks that were plaintiffs  
2 in Ecuador that would be raising the question of validity of  
3 the testimony they submitted, the truth of their assertions in  
4 their complaint about that, it would corroborate the  
5 defendant's subjective intent and not believing it was a sham  
6 litigation when they filed it. And they're also accused of  
7 continuing the conspiracy by refusing to admit that it was sham  
8 litigation. And to the extent that evidence is there to be  
9 learned about that contamination and in their, in Chevron's own  
10 files or in their experts that they use sometimes either work  
11 they had on another occasion but that information that they had  
12 and did not submit to the Court, we believe that that goes to  
13 corroborating the defendant's objective intent. Also may go to  
14 causation of any damages from the fraud and it goes to --

15 THE COURT: But you don't even have a counterclaim in  
16 this case, right?

17 MR. VESELKA: No. In defending the case, I am talking  
18 about their claim against us saying it's a sham litigation,  
19 defending that accusation.

20 THE COURT: I see. So your proposal is that we're  
21 going to try the Ecuador case all over again here?

22 MR. VESELKA: No, your Honor. We're going to show  
23 that there's evidence.

24 THE COURT: If you want to do that, maybe can I final  
25 another judge who wants to do that.

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Hearing

1 MR. VESELKA: You are not volunteering for that, I  
2 take it, your Honor.

3 THE COURT: Certainly, not this morning. It's almost  
4 Christmas eve. What am I crazy?

5 MR. VESELKA: What I am talking about today is  
6 discovery. What information is in their files or their expert  
7 files or what they hid from their experts or what sampling they  
8 had? So that we can discover how to use that at trial to  
9 defend the accusation that my part, my clients engaged in some  
10 kind of third party fraud by bringing a litigation that they  
11 claim was objectively frivolous and fraudulent when we want to  
12 show that there's evidence that they knew. So that when they  
13 make that accusation the jury would be entitled to know that  
14 they evidence --

15 THE COURT: Look, let's just -- I mean that's kind of  
16 an interesting issue, so let me just explore it for a minute.

17 Let's suppose that Texaco polluted the Dickens out of  
18 the rainforest, that everything Lago Agrio plaintiffs claimed  
19 in Ecuador was correct and, notwithstanding, all of that they  
20 won the case because the judge was paid a gigantic bribe to  
21 rule in their favor. I am not saying that happened, believe me  
22 I am not. It's a hypothetical for the purposes of discussion.

23 That judgment is obtained by fraud even if it's right,  
24 isn't that true?

25 MR. VESELKA: You have to have all the information in

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Hearing

1 terms -- The judge maybe was going to do it whether he got the  
2 payment or not. And first there's no evidence --

3 THE COURT: You know, actually, in an important sense  
4 that maybe even in a controlling sense but I haven't thought  
5 that all the way through, the Second Circuit has ruled on that  
6 issue. Probably not. It's not squarely but very close in a  
7 way in United States versus Mantin where a judge in the Second  
8 Circuit was prosecuted for taking bribes. The charge I think  
9 was not literally bribery but that was the gist of the claim.  
10 And the defense was his official conduct was never affected by  
11 the bribe. What he did was that he would decide the case and  
12 then he would send the bagman to the party that he knew was  
13 going to win and ex -- "extort" Is the wrong word here --  
14 obtain a payment which the payor for the intended was a bribe  
15 but which then said it was not a bribe at all because it was  
16 not an official conduct. He'd already decided the case. And  
17 the Second Circuit said no, the process has to be clean.  
18 That's what the crime is.

19 Now, it seems to me it's kind of analogous and it  
20 speaks to the hypothetical, doesn't it?

21 MR. VESELKA: It would speak to that hypothetical  
22 because there is no evidence that they found any payments to  
23 any judges.

24 THE COURT: I didn't say -- Mr. Veselka, let's be  
25 absolutely clear. I didn't say that. I have never said that.

CCLAACHE2

Hearing

1 I am not implying it. I have asked you, as judges ask lawyers  
2 all the time in the United States, a hypothetical question.  
3 Suppose the following facts, then what?

4 MR. VESELKA: Right.

5 THE COURT: I don't want to see that out of context  
6 anywhere, Mr. Veselka. I promise you.

7 MR. VESELKA: I am trying to go as to the  
8 hypothetical. If they don't find any of that evidence or are  
9 we not going to be entitled to show the substance to show the  
10 aspect of sham litigation if it's what they're saying our  
11 conspiracy is filing sham litigation when it wasn't, if they  
12 don't find evidence of a bribery of the judge.

13 THE COURT: But the point of the matter is for all the  
14 rhetoric here and they're probably as guilty of the rhetoric as  
15 your side of the case is and it's a hotly contested case. I  
16 understand that. Everybody's filled with rhetoric. The gist  
17 of their case is not that it was sham litigation, I think.  
18 That may be the PR. But the gist of the case is different as I  
19 understand it.

20 MR. VESELKA: Your opinion Wednesday said by among  
21 other things and it listed a number of items and number one is  
22 bring the case.

23 THE COURT: Well, yes, that's part of their rhetoric  
24 and I think I accurately captured their rhetoric in some  
25 respects. I can't possibly capture all the rhetoric on both

CCLAACHE2

Hearing

1 sides. I won't live long enough.

2 MR. VESELKA: In their complaint has paragraph after  
3 paragraph --

4 THE COURT: I know, Mr. Veselka.

5 MR. VESELKA: So we think we're entitled to discovery  
6 to dispute that fact to disprove that allegation.

7 MR. WERDEGAR: Your Honor?

8 MR. VESELKA: It's just a -- I'm sorry. It may in  
9 the -- we find anything or we're trying to introduce but we  
10 think we are entitled to discovery.

11 THE COURT: I understand the point.

12 MR. WERDEGAR: That was my point, your Honor. As you  
13 said earlier in the hearing that sunshine is the best  
14 disinfectant. We're seeking discovery. We have a basis for  
15 seeking this.

16 THE COURT: Well, I understand your point. Maybe an  
17 editor's blue pencil might solve the problem, Mr. Mastro.

18 MR. MASTRO: Well, your Honor, I just -- I'm going to  
19 avoid my usual inclination to use rhetoric. So I appreciate  
20 that your Honor doesn't need to hear rhetoric.

21 I just wanted to follow-up on two things though that  
22 your Honor mentioned. One, in addition to Mantin there's a  
23 long line of cases Hazel Atlas in the Supreme Court.

24 THE COURT: Yes, absolutely. I remember.

25 MR. MASTRO: And, of course, there it was the mere

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Hearing

1 ghostwriting of an article to support the case whether the case  
2 had merit or not, whether the article had merit or not. Aoude,  
3 a First Circuit case where a contract was offered that  
4 exaggerated then the real contract they couldn't even proceed  
5 on the real contract.

6 THE COURT: But look, your complaint is filled with  
7 this sham --

8 MR. MASTRO: But, your Honor, this I wanted to address  
9 that next briefly. A sham occurs on many levels, your Honor.  
10 A sham litigation because of collusion with the government, a  
11 sham litigation because of fixing the process with the Court in  
12 Ecuador, a sham litigation because they sue Chevron which never  
13 even did business in Ecuador instead of Texaco, a sham  
14 litigation because they changed the law in Ecuador in the  
15 interim after the original commitment to go there and then  
16 applied that law retroactively. But, your Honor, just follow  
17 me. One point Mr. Werdegarr mentioned, he says there's injury  
18 to his client because his client incurred attorney's fees. In  
19 fact, Mr. Werdegarr --

20 THE COURT: I know. I read the papers. You say he  
21 testified that, in fact, he hadn't paid any attorneys fees. He  
22 is not paying his attorney's fees.

23 MR. MASTRO: Yes, your Honor.

24 THE COURT: Right. I understand. I actually read  
25 this stuff.

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Hearing

1 MR. MASTRO: Oh, I know. But he might want to confirm  
2 that to the Court because that happens to be his own client's  
3 testimony.

4 THE COURT: I imagine at some appropriate point  
5 there'll be a 300 page motion addressed to that issue. I do.

6 MR. JORALEMON: Your Honor, if I may, on a practical  
7 level, Chevron takes the position that with respect to the  
8 environmental evidence or the science as we call it, at most it  
9 has to be limited to what was in the record. And that's what  
10 your Honor said two days ago in the decision on third party  
11 subpoenas and that's the position Chevron is taking. If the  
12 Lago Agrio court did not consider the science, then it's not  
13 relevant to any parties' claims or defenses here.

14 THE COURT: The point made by your colleague at the  
15 back table is you allege they brought sham litigation. They  
16 said they're entitled to show that there was at least some  
17 scientific evidence of which you were aware that suggests  
18 otherwise. I understand the point. I am going to defer on  
19 this one Number 35 and I am going to suggest that all of you go  
20 back to the drawing -- to the conference room on this. It may  
21 be that Chevron really means to assert by using the term "sham  
22 litigation" that it was a lawsuit that transparently had no  
23 merit at the inception if in a scientific sense. And it may  
24 mean, it may be that they're really asserting something else.  
25 And if they're really asserting something else, that may change

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Hearing

1 the scope of the discovery that may be appropriate here and I  
2 don't see any reason why I should rule on this particular point  
3 before you have exhausted the ability, the possibility of  
4 resolving it along those lines.

5 Now, of course, if everybody wants to cycle back a  
6 decade or more and go back to where this all would have stood  
7 before the Aguinda form dismissal and start from square one in  
8 a U.S. court, let me know. I'll try to get on a plane.

9 MR. MASTRO: Your Honor, I just want to be crystal  
10 clear and we will have those conversations and we will clarify  
11 this to the Court. It is not our intention at all to retry the  
12 Lago Agrio case and we will clarify these issues consistent  
13 with your Honor's most recent opinions to make that crystal  
14 clear as to the limitations of what we intend to prove and what  
15 the discovery we think should be therefore.

16 THE COURT: Yes.

17 MR. MASTRO: Thank you, your Honor.

18 THE COURT: Well, it's going to take three to tango  
19 here. What else in this group?

20 MR. WERDEGAR: Oh, no. There's the final one in this  
21 section are payments to experts, your Honor, and we're seeking  
22 in 36 we want information regarding the payments that were made  
23 to any expert who served during the Lago Agrio litigation  
24 payments made by Chevron.

25 THE COURT: These are experts who testified for



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Hearing

1 Chevron?

2 MR. WERDEGAR: Testified for Chevron, were court  
3 appointed, meaning neutral or supposedly neutral or payments  
4 made to any of the plaintiff's experts. So we want all those  
5 categories. And our understanding is that with respect to  
6 they're going to comply, they say they'll comply with Rule 26  
7 with respect to payments to their own experts and then they say  
8 that will also provide documents sufficient to show any  
9 payments made to the court appointed experts.

10 With respect to that, your Honor, we don't think  
11 documents sufficient to show satisfies the discovery that we  
12 should be entitled to.

13 THE COURT: It's going to satisfy it for the first  
14 cut. That's for sure. If there aren't any, that's that. If  
15 there are, then we'll talk about it.

16 MR. WERDEGAR: OK. Your Honor, so as long as it's  
17 understood the attorneys out there, there are payments and we  
18 are not seeking additional information, that makes sense.

19 THE COURT: Right. OK. That's number 36 is it or 36  
20 and 38?

21 MR. WERDEGAR: Give me a second, your Honor.

22 THE COURT: And 37.

23 (Pause)

24 MR. WERDEGAR: Your Honor, 37 is really, it's the same  
25 issue as 35. 37 also seeks communications with experts.

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Hearing

1 THE COURT: OK.

2 MR. WERDEGAR: So that should be wrapped into the meet  
3 and confer.

4 THE COURT: 35 and 37 we're conferring.

5 MR. WERDEGAR: Correct.

6 THE COURT: And 38?

7 MR. WERDEGAR: My 38 is different from my 36.

8 THE COURT: I know it can be a challenge and it's not  
9 just you.

10 MR. WERDEGAR: I understand that. 38 should be, I  
11 think it's resolved by the ruling you just gave of 36 and court  
12 appointed experts, so there were no payments.

13 THE COURT: OK.

14 MR. WERDEGAR: If there are payments then we have the  
15 right --

16 THE COURT: You'll contact. OK. Now that's Exhibit  
17 7.

18 We'll take five minutes and move on.

19 (Recess)

20 THE COURT: OK. So we're up to nine. You may be  
21 looking good, Mr. Werdegarr, but I do have -- I will be going to  
22 lunch at 12:30.

23 MR. WERDEGAR: Yeah, I think we're going to cautiously  
24 optimistic we're going to make this through fine.

25 First of all, I am happy me to report that number 124,

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Hearing

1 the parties resolved that after this submission was made but on  
2 Wednesday.

3 THE COURT: OK.

4 MR. WERDEGAR: So 14 has been resolved. We will, as  
5 per your instructions regarding yesterday's proceedings, and we  
6 will memorialize these agreements and resolutions in a joint  
7 document as you described this morning.

8 THE COURT: Yes.

9 MR. WERDEGAR: The rest in this series, your Honor,  
10 are all requests and I think they can be taken largely  
11 together. They're all requests seeking evidence in Chevron's  
12 possession regarding contamination and the state of the  
13 environment in the former concessionary. To eliminate any, try  
14 to eliminate or alleviate at least any burden objection with  
15 respect to this series, we offered during the meet and confer  
16 process that Chevron has identified some archives and some  
17 custodians that it's agreeing to search with respect to the  
18 responsive information. We said, we are not asking you to go  
19 beyond what you've already agreed to search. But as you  
20 encounter things in the search you are already doing with the  
21 materials you've already agreed to review, if you encounter  
22 responsive materials, materials concerning ground water  
23 contamination, soil contamination and the like, can you please  
24 produce those as well? And they've declined to do so. And I  
25 think their basis for doing so is relevance, your Honor, and I

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Hearing

1 think it relates back to the discussions we were having before  
2 the break about whether and to what extent scientific evidence  
3 of contamination or documentary evidence might be percipient  
4 witness evidence that Chevron had in its possession but didn't  
5 make it into the record during the Lago Agrio litigation  
6 because Chevron didn't provide it to its experts and its  
7 experts therefore didn't account for it in their reports. It  
8 wasn't turned over by whatever other mechanisms of discovery  
9 there were, is relevant to this case. And as we talked at  
10 length during the break it's, certainly, our position it's  
11 relevant to unclean hands whether Chevron was manipulating the  
12 record and manipulating the evidence and concealing evidence --

13 THE COURT: So let's just focus on that one for a  
14 minute. Your view then would be that in, for example, a  
15 product liability case the manufacture would have a duty to  
16 give any relevant information in its possession to a testifying  
17 expert that it had engaged, is that right? And that the  
18 failure to do so would be unclean hands?

19 MR. WERDEGAR: I think, your Honor, that if the  
20 company knew that the information it was providing to its  
21 expert if it was aware of information is directly contradicted  
22 what it was asking to rely, its expert to rely upon it says  
23 here are our records of whatever this product liability thing.  
24 Here are our testing records that show that we did "X" and the  
25 result was "Y". And they've only given them half the records

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Hearing

1 and they leave out the ones that show that the product broke  
2 six times out of seven and they just they don't disclose those  
3 to their expert, then their expert then goes on to testify and  
4 says that I was provided all the companies records. I do think  
5 there could be an unclean hands issue there, your Honor. It's  
6 sort of yielding false or misleading testimony or reports.

7 THE COURT: Suppose that what they do is they engage  
8 in expert and they say look, expert, we're being sued for  
9 deficient design. You're a design expert. Look at the device.  
10 We want you to give an opinion, whatever your opinion is after  
11 making whatever tests you wish. Unclear hands to fail to give  
12 information to the expert?

13 MR. WERDEGAR: Your Honor, just use a slightly  
14 different hypothetical because I don't think the scenario you  
15 describe is just to look at and the test the device and the  
16 expert looks at and tests the device. I guess in your  
17 hypothetical what if the expert looked at and tested the device  
18 and his first test of the device was, OK, he did a slightly  
19 different test and the device explodes and would hurt the  
20 little child. Then he gives his expert report and he doesn't  
21 disclose test number two. And he gives also opinions about  
22 test number one.

23 And here there is evidence, for example, that Chevron  
24 had samples that it was taking, soil samples during the course  
25 of the litigation and certain samples are provided in one

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Hearing

1 laboratory and other samples are sent to another laboratory  
2 that wasn't an official laboratory

3 THE COURT: What's an official laboratory of record?

4 MR. WERDEGAR: My understanding of how this works is  
5 that each side had a laboratory that was disclosed as being the  
6 facility in which its samples were being tested and that there  
7 was a -- that both sides knew which laboratory was processing  
8 that side's samples and this was another laboratory that hadn't  
9 been disclosed.

10 Now I may -- that's my secondhand understanding. But  
11 I do know that there's evidence regarding samples being sent to  
12 different laboratories based on whether they were dirty or not  
13 and the laboratory that, again, it is my understanding  
14 laboratory that certain samples were sent to is not a  
15 laboratory that knowing to be a laboratory Chevron was using in  
16 connection with this litigation. So, again, this is back to  
17 the hypothetical.

18 THE COURT: We're all talking hypothetically here,  
19 again, because we're trying to get our minds around this. Take  
20 your unclean hands point, that is to say I've heard it and I  
21 know what you are saying. And the problem that I am having  
22 with it is the same problem I have been having with this  
23 unclean hands defense all along. And it is both sides were up  
24 to shenanigans and one side is successful with the shenanigans.  
25 That should disable the other side from, which is the injured

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Hearing

1 party ultimately, although, obviously, they intended to injure  
2 the prevailing party themselves. The injured party should be  
3 cut-off relief? Maybe. I don't know.

4 MR. WERDEGAR: Your Honor, this, obviously, is an  
5 issue that is briefed from the last case. No doubt we've  
6 briefed again in this case. But as a very important level  
7 which I know that you know well, the principles of unclean  
8 hands is you have to get -- to equitable relief from the Court  
9 you need one who seeks equity must do equity. So I think the  
10 principle is and how it applies here is something that but,  
11 yes, you can be, I think you can be barred from getting the  
12 equitable relief from the Court if your own conduct in  
13 connection with the matter was sufficiently unclean, corrupt.  
14 So I do think that's the basic principle.

15 But, again, we're talking about discovery here, your  
16 Honor. It may prove down the road that we can't prove all the  
17 things that we think we will be able to prove or maybe we can  
18 prove them all and there'll be a fight over whether it really  
19 does support the unclean hands defense. But for purposes of  
20 discovery and under the principles of discovery we, certainly,  
21 believe that we should be entitled to know if there's  
22 scientific evidence about the examination that Chevron knew,  
23 had in its possession and didn't share with its experts, didn't  
24 otherwise make part of the record. So that there was  
25 Chevron -- Chevron knew all along as it's accusing us of sham

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Hearing

1 litigation, accusing, saying making public statements about  
2 this being sham in pleadings in this case and everything else  
3 that it's sitting on information that shows to the contrary

4 THE COURT: Well, if the argument is sham litigation  
5 then this is --

6 MR. WERDEGAR: Then there's several arguments, your  
7 Honor. Sham is one of them. Unclean hands, we've now been  
8 discussing but I think it also pertains to the earlier  
9 discovery request we have been talking about. That's why --

10 THE COURT: Well, you mean 35 and 37?

11 MR. WERDEGAR: Correct.

12 THE COURT: Well, we were discussing that principally  
13 in terms of this.

14 MR. WERDEGAR: So the overarching question is whether  
15 we should be entitled to get in evidence Chevron's possession  
16 or scientific evidence of contamination or specific evidence of  
17 contamination for the various purposes we have been talking  
18 about. And, again, with respect to these, we're only asking  
19 them to search within the universe of documents that they're  
20 already searching, your Honor.

21 THE COURT: Let me hear from Mr. Veselka.

22 MR. VESELKA: The example that your Honor started with  
23 there about the product liability case, you always get to  
24 discover what evidence the company has as to the scientific  
25 testing other than something maybe done by consulting expert



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Hearing

1 but if they --

2 THE COURT: But that's because you are litigating the  
3 fundamental question of whether you've got a defective device  
4 or product. And the reason that's not an answer to this  
5 problem is because we are not here litigating the question of  
6 whether the rainforest is polluted and who did and who's  
7 responsible for it. That's not the issue in this case.

8 MR. VESELKA: But because of their allegations where  
9 they say, specifically, that it was -- it's fraudulent to claim  
10 that it was polluted, that it was --

11 THE COURT: Well, this is the sham discussion.

12 MR. VESELKA: There are other specific parts. To the  
13 extent that they had information that they didn't give to their  
14 experts, we think the jury should be able to hear about that's  
15 how they conducted the trial to take into account.

16 THE COURT: Well, unclean hands is an equitable  
17 question all together. So the jury is not hearing it on that  
18 theory.

19 MR. VESELKA: I am talking about on judging what  
20 they're saying maybe we did vis-a-vis how we worked with  
21 Cabrera or some other experts. They're talking about dealings  
22 with every expert. We want to know how they were dealing --

23 THE COURT: I know you want to know about it.

24 MR. VESELKA: What we find in the discovery we might  
25 be able to present to the Court and show how it would be

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1 something the jury should be able to take into account in  
2 determining how we dealt with an expert who is appropriate or  
3 not.

4 THE COURT: Look, I'd rather imagine that if we ever  
5 get to that point and there's ever any evidence supporting all  
6 of this, that if you endeavor to do that I will be met with a  
7 very strong objection. And the objection will be it's got  
8 nothing do with it, judge. Two wrongs don't make a right. To  
9 put it in the simplest terms. In other words, I think the  
10 argument will be made and I am not deciding it today but the  
11 argument will be made that if both parties were trying to  
12 procure a corrupt result and one party succeeded, the fact that  
13 the other party was trying to procure corrupt result is not a  
14 defense to a RICO or a fraud action. That's what I think the  
15 arguments being to be and, therefore, that evidence is not  
16 relevant and if it were relevant it should go out under 403  
17 because among other things it's an invitation to do something  
18 that the jury, perhaps, is not permitted to do. Now, that's  
19 what I anticipate.

20 MR. VESELKA: We anticipate that. And our ability we  
21 should be able to discover what the evidence is to see how we  
22 can argue whether it should be excluded or not. That's why at  
23 the discovery point I think we should be able to get it in  
24 order to be able to see if it would be excluded on that ground  
25 or have grounds based in the facts of what's there to show the

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1 Court to make that decision.

2 THE COURT: Perhaps. That's what we're talking about.  
3 Who wants to answer for the plaintiff?

4 MR. MASTRO: Your Honor, I just want to speak briefly  
5 to the issue because I think your Honor has hit on it.

6 THE COURT: Can you get closer to a microphone,  
7 Mr. Mastro? My hearing isn't what it once was.

8 MR. MASTRO: No problem. I am unusually soft spoken  
9 today.

10 THE COURT: I won't tell anyone.

11 MR. MASTRO: Thank you. Your Honor, first this does  
12 go to the issue we were discussing before and we will clarify  
13 the limitations of the case we intend to present in light of  
14 your Honor's rulings as well. We were not here to retry the  
15 Lago Agrio case, number one.

16 Number two, on unclean hands I think your Honor has  
17 hit on it precisely. It has to do with its relation and its  
18 magnitude and its materiality whether the evidence offered in  
19 defense is something that --

20 THE COURT: No way to know all that till we know what  
21 the evidence is.

22 MR. MASTRO: Understood. But the very sample that  
23 they're using, your Honor, in the context of experts, experts  
24 are hired all the time. Sometimes it's consulting experts.  
25 Sometimes they do testing outside the court process. The

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1 notion that the fact that there were experts retained to  
2 consult with, maybe not testify, that there was some testing  
3 done as a result, the very instance they're citing to is an  
4 example that we were using yesterday where Mr. Page wrote to  
5 three of our experts accusing them of, basically, you were  
6 misled. There was other testing. There was another lab. They  
7 chose cites. And those experts all responded, it's not true.  
8 We aren't misled one wit. You wrote to our deans and accused  
9 us of this. And it didn't happen one wit. That's what they're  
10 saying oh, give us this sweeping discovery into something that  
11 is common in litigation when you are working with experts. So  
12 I think that this is really trying to reopen the whole can of  
13 worms that this case isn't about. And it would be incredibly  
14 burdensome, not relevant to any --

15 THE COURT: Well, how burdensome is it to give them  
16 these documents to the extent they appear in the universe that  
17 you are searching anyway?

18 MR. MASTRO: Your Honor, one, it was a lot of  
19 communications over many years. So it is within the universe  
20 that we are going to search but it would be a lot of documents  
21 to review, number one. And then determine which ones are  
22 responsive, which ones there might be some arguments about,  
23 whether they have to be produce.

24 But also, your Honor, it goes to fundamental questions  
25 of relevance. And this is your classic situation of trying to

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1 retry the case. And we know what has happened here. They are  
2 trying to retry the science case to then use the information  
3 not for a relevant purpose in the case but for irrelevant and  
4 we believe not proper purposes.

5 THE COURT: The irony of that, of course, is  
6 remarkable because it's only a little over a year ago when they  
7 were going berserk at the thought that you were going to call  
8 experts who might say something about the science case.

9 MR. MASTRO: Right. Exactly, your Honor. So these  
10 are really my points, your Honor. So I think they are tried to  
11 the 35 and 37. We will explain to the Court the limitations of  
12 what we intend to prove so that it will be clear that we're not  
13 talking about something sweeping and retrying the science case  
14 and we'll talk to them about those issues.

15 THE COURT: You'd better because I don't want to come  
16 back and do this again.

17 MR. MASTRO: Understood. But to try and get this  
18 through the back door, your Honor, it's just not right. It's  
19 just not relevant.

20 MR. WERDEGAR: Your Honor, two last observations, if I  
21 could, on this issue. First, obviously, we weren't part of  
22 the -- Donziger defendants weren't part of defendant Count  
23 Nine. These are different claims. It's a different case.

24 With respect to just one more point on the relevance  
25 point, your Honor. They have accused, as you are well aware,

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1 of Cabrera, the Cabrera report is one of the center pieces of  
2 their fraud and they generally say that the plaintiff's side  
3 manufactured evidence. The Cabrera report fraud is, in their  
4 view, is both the authorship and how the report was generated.  
5 But I also believe they are accusing the results in that report  
6 of being inaccurately reflecting the sort of scientific  
7 evidence of what's going on and in the form of concessionary.

8 THE COURT: Possibly. But to be frank with you, as we  
9 sit here at the moment, that's not what I remember about their  
10 case on the Cabrera report.

11 MR. WERDEGAR: If they would agree that the report  
12 itself is accurate but I don't think that's what they're  
13 saying. They are saying Stratus wrote it but I think they're  
14 also saying that Stratus science, they didn't do the science  
15 right or they doctored the science. But they have evidence  
16 showing and corroborating the scientific results that they are  
17 saying are fraudulent, both in the Cabrera report and in other  
18 plaintiff's experts that goes to relevance too to show that  
19 these scientific reports that they are claiming are fraudulent  
20 are not in fact fraudulent. They are corroborated by evidence  
21 that Chevron itself has. Again, this is not unclean hands.  
22 This goes to the defense of the allegations against my client.

23 MR. VESELKA: And very briefly, your Honor. The  
24 reasons we were not -- we were opposing scientific evidence in  
25 Count Nine because the issue there was impartiality of the

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Hearing

1 tribunal and the system of justice.

2 THE COURT: And whether the judgment was obtained by  
3 fraud precisely the issue here -- well, not precisely but  
4 closely related to the issue here. So closely that you or  
5 Mr. Donziger or both resisted severance of Count Nine on the  
6 ground that the fraud issue was all over Count Nine and  
7 everything else. I remember these things most of the time, not  
8 always.

9 OK. You're all going to talk. I hope you solve this  
10 problem. And that takes care of Mr. Donziger's stuff, right,  
11 Mr. Werdegar?

12 MR. WERDEGAR: Sure, your Honor. We will talk to them  
13 and hopefully reach agreement. We have reached agreements in a  
14 lot of areas. If heaven forbid we remain at loggerheads do we  
15 just submit it to you for ruling?

16 THE COURT: Yes. And I have a very busy January and,  
17 therefore, I am going to ask you to do that. Get whatever has  
18 to be gotten to me by the 3rd of January. I hope that's doable  
19 without any horrendous problems from anybody.

20 MR. WERDEGAR: We'll discuss. I don't see that we  
21 need to further brief this issue. We have the record. We have  
22 the argument. I was envisioning a joint letter saying we have  
23 not been able to resolve our issues with respect to these  
24 categories.

25 THE COURT: I also want the order resolving everything

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Hearing

1 else, the schedule, the whole thing ready to go January 3.

2 Now, I also want to know one other thing because it  
3 has a bearing conceivably on this. And that is a lot of this  
4 has hinged on the arguments by Mr. Donziger's counsel with  
5 respect to his counterclaims, not a little but a lot of it.

6 (Continued on next page)

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1 THE COURT: Chevron contended when they moved for  
2 leave to amend that the counterclaims were legally  
3 insufficient. I declined to decide that on a motion to amend.  
4 I wanted better and fuller briefing.

5 When is that motion going to be forthcoming because it  
6 may affect the scope of this?

7 MR. MASTRO: Yes, your Honor. Our response date is  
8 the 24th, this coming Monday, and we'll be moving to dismiss.

9 THE COURT: Okay.

10 MR. MASTRO: Thank you, your Honor.

11 THE COURT: We can get a start on Mr. Veselka's part  
12 of the problem.

13 MR. VESELKA: Your Honor, I want to first make sure  
14 the Court appreciates how much has been resolved.

15 THE COURT: Let me say something about that. I really  
16 do. There have been times in this litigation when at least to  
17 my perception the acrimony among counsel could be cut with a  
18 knife. Furthermore, the requests that everybody has drafted  
19 and the objections to them went so far overboard in every way  
20 that I can imagine that they are textbook and they may some day  
21 be a textbook. They are Exhibit A on some concerns about where  
22 we are on litigation in 2012. That said, I am enormously  
23 appreciative of the effort and degree of success that has been  
24 achieved on this stuff.

25 MR. MASTRO: Thank you.

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1 MR. VESELKA: The majority of the requests that we had  
2 have been worked out.

3 THE COURT: I understand that.

4 MR. VESELKA: And a large slug of that being under the  
5 process the Court has said before we'll produce this now, we'll  
6 look at it and if there are specific things we want to ask  
7 about later, we can ask about and they agree we have the right  
8 to move to compel them. We resolved a large part.

9 As you can see on page 4 of 23 of Document 666, we  
10 have seven. That is a little index of the seven categories  
11 there just to give you somewhat of a precis.

12 THE COURT: I am confused. Page .

13 MR. VESELKA: Page 4 of 23 of the court filing  
14 numbers.

15 THE COURT: Oh, I see. The header on the ECF.

16 MR. VESELKA: Yes, sir.

17 THE COURT: Got it.

18 MR. VESELKA: You see the first one, the first  
19 category really is the issue we have just been discussing. So  
20 I think we may have unless there is something that want to do  
21 to see if that whole category is part of what we need to go  
22 back and confer on.

23 THE COURT: I am not sure I am understanding what you  
24 are telling me.

25 MR. VESELKA: To the extent we were seeking to discuss

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1 issues with regard to scientific evidence of what had occurred  
2 in the past are that Chevron has that they would look for that  
3 we were going to confer about rather they are going to find  
4 ways either by adjusting what they are alleging and/or what  
5 we're going to find an easy way to look for it and start with  
6 that process rather than address these or not. At one time we  
7 had asked them specifically as to some of the potentially  
8 historical scientific evidence, do you know where it is, how  
9 handy is it, can we find a way to address any burden issue as  
10 the Court has just recommended be done with Donziger's request.  
11 So we're amenable to that process.

12 THE COURT: Mr. Joralemon.

13 MR. JORALEMON: Yes, your Honor, if I may just to try  
14 to clarify and preview for the Court how I expect this going to  
15 unfold. There are a total of four exhibits in play here and  
16 they are duplicative, two of the LAPs and two of Donziger.  
17 They deal with the experts.

18 THE COURT: You lost me right there.

19 MR. JORALEMON: Your Honor, we are repeating many  
20 things before your Honor. I apologize for that. Let's take it  
21 by subject. There are two subjects. One is, let's call, Lago  
22 Agrio expert related discovery not in the record. That is  
23 subject one. Subject two is evidence of historical  
24 contamination that goes back to the '60s. Those two subjects  
25 and Chevron's objection in discovery directed at those two

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1 subjects will be resolved by the clarification of Chevron's  
2 case. Now, I suspect that the parties are not going to be able  
3 to resolve this on their own. We'll submit to the Court, Here  
4 is Chevron's case, and then your Honor will have to resolve the  
5 objections relating to those two subjects. Sorry, Lago Agrio  
6 experts, historical contamination.

7 So what Mr. Veselka is saying is Exhibit 1 of the LAP  
8 joint submission here is the historical contamination subject.  
9 We did not spend any time on this today further than we already  
10 have because it will get swept up in what is coming to you.

11 MR. VESELKA: That is what I was trying to say, your  
12 Honor. I think that process will be how we can try to  
13 address -- it is a lot more at peace because we asked it in a  
14 more granule way to be sure it would be clear, but it is all  
15 covering the same thing.

16 THE COURT: I take it your answer to Mr. Joralemon's  
17 question is yes?

18 MR. VESELKA: Yes, sir. Besides Exhibit 1, Exhibit 5  
19 is the one dealing with the experts. So those are the two that  
20 I think we have a procedure in place to deal with pursuant to  
21 the Court's suggestion. So I think we can begin with Exhibit  
22 2.

23 THE COURT: Do you agree?

24 MR. JORALEMON: Yes, sir.

25 THE COURT: You guys don't want me to take back all

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1 the nice things I just said, do you?

2 MR. VESELKA: No. No.

3 THE COURT: That was really confusing. We'll start  
4 with Exhibit 2 then.

5 MR. VESELKA: This, your Honor, deals with requests  
6 about dealings with the Republic of Ecuador or Petra Ecuador  
7 and/or the court personnel.

8 THE COURT: Look, we just went through all of this  
9 with Mr. Donziger. You and Mr. Donziger know each other I hear  
10 and if there is anything here that need to be addressed that is  
11 not adequately dealt with on the Donziger proposals, tell me  
12 what it is and we'll deal with it and otherwise you are going  
13 to get the discovery that Mr. Donziger gets on this and we'll  
14 be done with Exhibit 2.

15 MR. VESELKA: I believe that it is resolved by the  
16 rulings.

17 THE COURT: Okay.

18 MR. VESELKA: The issue about agreement the Court was  
19 going to defer on that I think. Oh, the time frame. The time  
20 frame is off. Yes, your Honor. That goes to 238 and 239.

21 MR. JORALEMON: If I may briefly on Exhibit 2, there  
22 are actually two different subjects. One is the Aguinda  
23 contacts. That is resolved by the Donziger resolution. The  
24 second subject, however, is bank account information. Now,  
25 this is what we raised with your Honor and this goes far beyond

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1 what Mr. Donziger was seeking and what the LAPs want is all  
2 Chevron's bank account information of any payment relating to  
3 anyone, including their lawyers and there is a list there.

4 THE COURT: This is No. 128?

5 MR. JORALEMON: Correct.

6 THE COURT: I thought I misunderstood Mr. Veselka to  
7 say that to answer affirmatively in response to my suggestion  
8 that what the Lago Agrio claims are going to get is what  
9 Mr. Donziger is going to get on this and that is it.

10 MR. VESELKA: I was talking about the -- they are  
11 going to provide payments, sufficient to show payments, and  
12 then rather than fighting over what we need additional  
13 document. They are claiming damages from legal fees. So I  
14 think we can get payments as to the lawyers. This also goes to  
15 payments to the experts. We're trying to track who all got  
16 paid to see where it may go and they were saying they would  
17 provide us with the experts documents sufficient to show the  
18 payment and then we reserve the right to come back and look and  
19 that is all I am asking here, that they show documents  
20 sufficient to show what payments were made as to these  
21 categories of counsel, consultants, experts, personnel of the  
22 court and any ROE official.

23 THE COURT: You think they are trying to recover for  
24 payments they made to court personnel?

25 MR. VESELKA: No. No. I believe the Court addressed

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1 this on a different one. If they are bribing officials and  
2 they have got the records --

3 THE COURT: You are confusing, Mr. Veselka. The first  
4 thing I said was, Is there anything here that is not adequately  
5 covered by the discovery ordered in response to Mr. Donziger's  
6 request. And although because of the way the question was  
7 asked the answer is yes, the substantive answer that I got from  
8 you as I now phrase the question was no. In other words, the  
9 Donziger's rulings take care of everything. Then you talk some  
10 more and I thought that was all finished. Then Mr. Joralemon  
11 got up and said, It is resolved as to the Aguinda, Republic of  
12 Ecuador stuff but it is not resolved because you want bank  
13 records. And then all of a sudden we're talking about damages  
14 and I don't know what we're talking about.

15 MR. VESELKA: I apologize. I was addressing I thought  
16 the process that resolved payments with regard to experts which  
17 is one of the subcategories here.

18 THE COURT: I am not talking about that or maybe I am  
19 but I am not intending to talk about that specifically or to  
20 limit my remarks to that. This whole Exhibit 2 relates to  
21 discovery of payments made to counsel in the what you call the  
22 Chevron litigations. Now, what does that mean?

23 MR. VESELKA: The Chevron litigations it was the  
24 1782s, this case, Count 9, and Lago Agrio and the bit  
25 arbitration I believe. Our definition I think the difference

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1 between the two is added the bit and you all didn't add the  
2 bit.

3 THE COURT: Well, I have the bit in my mouth right  
4 now. Now, that was an unfortunate but necessary digression not  
5 just the comment about the bit in the mouth.

6 Let's come back to this. You wanted payments  
7 information with respect to the Chevron litigations, the  
8 definition of which you just described, consultants, experts,  
9 personnel in the Lago Agrio court, Republic of Ecuador and  
10 various other categories.

11 Now we just had a whole long discussion with  
12 Mr. Werdegar and Mr. Joralemon and Mr. Mastro about payments at  
13 least in relation to Republic of Ecuador people and maybe more  
14 broadly with respect to Mr. Donziger's request, right?

15 MR. VESELKA: Yes, sir.

16 THE COURT: Tell me exactly what areas of information  
17 you want that they did not ask for and that you are still  
18 pressing?

19 MR. VESELKA: They asked for payments vis-a-vis  
20 Republic of Ecuador and I believe vis-a-vis experts.

21 MR. WERDEGAR: The lawyers, consultants are categories  
22 that were not addressed.

23 THE COURT: Were or were not?

24 MR. WERDEGAR: Were not, your Honor.

25 MR. VESELKA: At some part we added a subpart. In



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1 subpart 128 A.

2 THE COURT: Maybe that is a better way to do it.

3 MR. VESELKA: Yes.

4 THE COURT: Tell me which ones of these numbers in  
5 your view are still alive?

6 MR. VESELKA: 128 A and B consultants. Experts I  
7 believe was covered by Mr. Donziger. And I think D and E were.

8 MR. WERDEGAR: And F.

9 THE COURT: D and E?

10 MR. VESELKA: D and E were covered. So C, D and E was  
11 covered by the decision of Donziger. We're trying A, B and F.

12 THE COURT: And 238 and 239?

13 MR. VESELKA: Those were resolved. That was the same  
14 as the Donziger.

15 THE COURT: And 128?

16 MR. VESELKA: 128 is just the subheading for the 128  
17 A, B, C, D, E, F.

18 THE COURT: I see. Now I understand. Now that we  
19 have some idea of what is going on here --

20 MR. VESELKA: So what I was asking is whether we would  
21 use the same process if they provide information sufficient to  
22 show payments and then we see if there is anything else to talk  
23 about.

24 THE COURT: Any problem?

25 MR. JORALEMON: Yes, your Honor, a big problem

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1 unfortunately. Mr. Veselka is conflating different requests  
2 here. There are a host of requests seeking payments, payment  
3 information, what did Chevron pay to whom. This request wants  
4 the bank records underlying such payments.

5 THE COURT: He just bailed out that one. He just said  
6 documents sufficient to show.

7 MR. JORALEMON: What he is doing is turning this bank  
8 records request into the specific request for counsel payments.  
9 Chevron is not producing its payments to counsel in any Chevron  
10 litigation. Chevron is not producing payment for consultants  
11 for investigators. Those objections are elsewhere, not teed up  
12 with in Mr. Veselka's chart today. This chart tees up whether  
13 they get banking records.

14 I am sorry if I am not being clear, your Honor. This  
15 request subsumes Chevron has agreed to produce payments to  
16 consultants or investigators. Chevron has not agreed to  
17 produce that. Essentially the way this is set up, your Honor,  
18 Mr. Veselka is trying to back-door those requests, the  
19 objection to those requests, into this broader bank account  
20 information request.

21 THE COURT: I am lost. I don't understand you.

22 MR. JORALEMON: Okay.

23 THE COURT: He is asking for bank records on a half a  
24 dozen different topics. He says one, two, three, four of half  
25 of the dozen things are already taken care of.

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1 MR. VESELKA: That we were going to deal with Donziger  
2 and now we're asking to have the same process on the other  
3 categories.

4 THE COURT: As I understand what he is saying he is  
5 saying that in light of the rulings with respect to Donziger  
6 and whatever agreements were made with respect to Donziger,  
7 whatever they may have been he is no longer pressing 128 A, B,  
8 D and E. I am sorry. I misspoke. No longer pressing 128 C, D  
9 and E.

10 MR. JORALEMON: Right.

11 THE COURT: He is still pressing A, B and F.

12 MR. JORALEMON: Right.

13 THE COURT: With respect to A, B and F all he wants is  
14 documents sufficient to show the payments.

15 MR. JORALEMON: Right. Here is the problem, your  
16 Honor: First C, D and E Chevron has agreed to produce payment  
17 information to Mr. Donziger. For A, B and F Chevron hasn't  
18 agreed to produce any.

19 THE COURT: That is why we're going to talk about A, B  
20 and F.

21 MR. JORALEMON: What I am saying, your Honor, is the  
22 way Mr. Veselka has teed this up is this is a pile-on request.  
23 He asked elsewhere for the payment information. Here he wants  
24 the bank records relating to that.

25 THE COURT: Where did he ask for the payment

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1 information?

2 MR. JORALEMON: In other requests.

3 THE COURT: Does he matter? Because he is now saying  
4 he is not asking you for the bank records anymore on this. He  
5 wants documents sufficient to show what the payments were and  
6 then reserve the right to come back later.

7 Now, if he is elsewhere asked for documents sufficient  
8 to show what the payments were and he is now content to take  
9 those documents as at least a sufficient first cut at A, B and  
10 F, what is the problem?

11 MR. JORALEMON: The problem your Honor is that Chevron  
12 has objected to producing documents sufficient to show this  
13 payment information in these other requests.

14 THE COURT: So let's talk about it. I think I must  
15 have taken my stupid pills this morning or something.

16 Mr. Veselka's position is that this is at least in  
17 part the damages you claim.

18 MR. JORALEMON: That's incorrect, your Honor. It  
19 mischaracterize Chevron's claim. To the extent Chevron is  
20 claiming any component of any of this is damages, we're  
21 producing documents. That is another request. I apologize,  
22 your Honor, the reality we're dealing with 800 requests here.

23 THE COURT: Yes, I know that. I am challenged at  
24 keeping them all in my head at one time.

25 MR. JORALEMON: So I think the question for your

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1 Honor --

2 THE COURT: So your position is that in response to  
3 other requests you have agreed, and whether you agreed to them  
4 or not, you are now agreeing to produce documents sufficient to  
5 show payments that you claim as damages in this case?

6 MR. JORALEMON: Exactly, your Honor.

7 THE COURT: Mr. Veselka, why isn't that sufficient?

8 MR. VESELKA: Well, that term of recovery is a large  
9 portion of it. The other would have been wanting to see is the  
10 example if an investigator whose running around providing  
11 security service for them or something like that while they are  
12 in Ecuador is paid, Oh, gee they got paid \$1.2 million while  
13 serving as security, it might lead to request on something  
14 else. The fact that if they have done a nefarious payment,  
15 they wouldn't claim it as damages, then they don't show it.

16 THE COURT: I asked you what the reasons for those  
17 requests were and you said, Well, these are the damages they  
18 are claiming. Well, okay, that I understand. They are not  
19 fighting with you about that. So you are having trouble taking  
20 yes for an answer.

21 MR. VESELKA: We'll take yes for an answer under the  
22 agreements we have got right now.

23 THE COURT: So that takes care of all the 128 items  
24 and everything else in Exhibit 2 has been resolved, right?

25 MR. VESELKA: Yes, your Honor.

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1 THE COURT: Is Exhibit 3 still alive?

2 MR. VESELKA: I thought that was the expert.

3 THE COURT: That's the expert. That one is gone,  
4 correct?

5 MR. JORALEMON: Correct.

6 MR. VESELKA: No. 4 is a very straightforward and  
7 simple one, your Honor.

8 THE COURT: Famous last words.

9 MR. VESELKA: The Court may remember hearing about the  
10 Yasuni.

11 THE COURT: You do me too much credit.

12 MR. VESELKA: Ecuador has a project of using a certain  
13 part of the rain forest because of the parts of the world as to  
14 biodiversity there. They have talked about setting aside a  
15 world biodiversity preserve. If they can raise enough money,  
16 they will say we won't drill for oil and do other extractive  
17 industries in there. They have been soliciting contributions  
18 and that has been run or one time the government official  
19 dealing with that is Yvonne Bachie who had a various number of  
20 positions in the government over the years and met with Chevron  
21 a number of times and met with Chevron with regard to this  
22 project and it has been a concern about Chevron trying to  
23 corrupt the government of Ecuador in how it deals with trying  
24 to inject itself into this lawsuit. If they're being paid a  
25 billion and a half dollars for the Yasuni project, we want to

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1 find out about those dealings to see if there is any dealings  
2 quid pro quo vis-a-vis the government taking a position on the  
3 Lago Agrio litigation.

4 MR. JORALEMON: Your Honor, where is the Yasuni  
5 project mentioned anywhere? This is a UN sponsored order  
6 project that was lodged six months from the fraudulent sanction  
7 had issued. Mr. Veselka has not suggested in any way --

8 THE COURT: Is that right, Mr. Veselka, this project  
9 came into existence six months before the judgment?

10 MR. VESELKA: I don't remember exactly. I was  
11 thinking it was either late '09 or 2010. Six months may be  
12 right.

13 MR. JORALEMON: August 3, 2010.

14 MR. VESELKA: All right.

15 MR. JORALEMON: There is no allegation anywhere that  
16 Chevron had anything to do with this Yasuni project. So it is  
17 just a head-scratcher from our perspective. What does this  
18 have to do with the litigation?

19 MR. VESELKA: Well, there are numerous press accounts  
20 from Ecuador about Chevron discussing a meeting with Minister  
21 Bachie and potential amounts to be contributed. At the time  
22 they are dealing with -- as those conversations going on after  
23 the Lago Agrio decision has come out and they are trying to get  
24 the Court to -- they are trying to get government, the  
25 executive branch of the government to somehow intervene in the

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1 judgment or its appeals or enforceability knowing what they are  
2 saying and/or contributing there we think would be discoverable  
3 to determine if it is related.

4 THE COURT: You guys want to revisit Chevron's  
5 requests for everything that ever passed between you guys and  
6 any government in the world where the judgment might be taken  
7 for enforcement?

8 MR. VESELKA: I don't know what would be scooped up in  
9 it, but I don't want to revisit that, your Honor.

10 THE COURT: So I take it you will withdraw these,  
11 right?

12 MR. VESELKA: The only thing I have to be careful  
13 about --

14 THE COURT: There is not a direct cause and effect  
15 line here, but let me tell you this is about as far fetched as  
16 anything and in this case that is quite an accolade.

17 MR. VESELKA: We'll withdraw this topic. Just to  
18 clarify for the Court and to note Exhibit 86 is dealing with  
19 this Minister Bachie and the parties had agreed she would be in  
20 the category of things they will be producing some things  
21 unrelated to the Yasuni project. So that part will survive.  
22 It is just the part as to the Yasuni.

23 THE COURT: All we're talking about is to preserve the  
24 rain forest movement here. This particular exhibit. I don't  
25 think I have heard the defense claim that Chevron -- claim



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1 previously that Chevron was improperly doing things to preserve  
2 the rain forest and I am not making light of it either,  
3 counsel.

4 MR. VESELKA: We thought it was so out of character  
5 that is why we thought we ought to look into it.

6 THE COURT: Well, you better check up on whether they  
7 are giving aid and comfort to the hurricane victims, too.

8 MR. VESELKA: Item 5. There are two experts that they  
9 have reports from that predate bringing the litigation -- one  
10 of them has a report that is predating bringing the litigation  
11 and one that we believe may have done work before they made a  
12 decision to bring the litigation. This is Sproz Freiberg,  
13 which --

14 THE COURT: To bring which litigation?

15 MR. VESELKA: This litigation.

16 THE COURT: Okay.

17 MR. VESELKA: This is Sproz Freiberg, which does IT  
18 analysis work and they were and then this and Gus Leftenvich  
19 and we have requested to the extent that there are work that  
20 they performed unrelated -- before it was going to be decided  
21 that it was going to be used in this litigation if it is.

22 THE COURT: Isn't it perfectly obvious that if there  
23 was this material prepared in anticipation of litigation?

24 MR. VESELKA: The timing is what we don't know. That  
25 is why we're trying to get the timing.

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1 THE COURT: The material prepared even before somebody  
2 decides to bring litigation falls into that category if there  
3 is a sufficient nexus and believe me everything between your  
4 side of the table and Chevron has been in litigation for the  
5 last 20 some years. How could it not be in anticipation of  
6 litigation? I don't see any reason to suppose in anticipation  
7 of a big contribution to the Metropolitan museum of Art.

8 MR. VESELKA: In which case they would -- if we were  
9 allowed to go forward with this with discovery, they would put  
10 it and log it and we would know and that would show us when.  
11 There are issues we have got --

12 THE COURT: How would that help you?

13 MR. VESELKA: For example --

14 THE COURT: I spent two whole days here trying to  
15 narrow really at the instance of your clients, though I don't  
16 any of you were here, the subpoena to Patton Boggs precisely to  
17 spare the burden of logging information as to which I know  
18 privilege claims will be made across the board. So why  
19 shouldn't in this little tiny way I apply the same principle to  
20 this where it is so obvious that there is going to be a  
21 privilege claim. Unless there is some serious argument to be  
22 made that you need to get it logged because, A, it is relevant,  
23 and B, this there is some reason to think you can overcome work  
24 product protection.

25 MR. VESELKA: Your Honor, my concern is this: They

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1 were obtaining numerous documents in 1782s including documents  
2 that may be the documents about which they claim being the  
3 evidence of ghost writings from the judgment. They had  
4 possession. If they had these experts working on those  
5 documents before the judgment is ever issued, it may go to lead  
6 to discovery as to whether Chevron set up the ghost writing  
7 issue just as they tried to bribe one of the judges in order  
8 to --

9 THE COURT: Let me understand. You are saying that  
10 you need this because it might help you show that Chevron set  
11 up the ghost writing issue, which I understand to mean caused  
12 people as is alleged, not yet necessarily proven, on your side  
13 to either write part of the decision for the judge or slip the  
14 judge documents that the judge copied all without notice to the  
15 other side, that's how they set it up?

16 MR. VESELKA: Well, they might have set it up by them  
17 slipping it to the judge.

18 THE COURT: I see. They helped them write the  
19 judgment awarding \$19 billion against them?

20 MR. VESELKA: It is to be able to attack it for  
21 claiming it is ghost written if they had the documents and they  
22 somehow slipped them in. It is timing.

23 THE COURT: Slipped them in? I see.

24 MR. VESELKA: Somehow providing them to the court not  
25 in the record. That is what we're trying to --

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1 THE COURT: So they wrote parts of this decision  
2 hammering them as bad as anybody in world history has ever been  
3 hammered so that they could then attack it because the judge  
4 copied the bad stuff from them. Oh, please, Mr. Veselka. No.

5 If I misunderstood you, please tell me.

6 MR. VESELKA: The issue we're trying to investigate is  
7 whether they may have taken the documents that they provided  
8 somehow to the court, that the court used, not with any  
9 involvement by the plaintiffs' team, in drawing up its judgment  
10 because they knew and had planned they would claim and  
11 accused --

12 THE COURT: Those were documents that Mr. Faharro  
13 wrote your guy, right?

14 MR. VESELKA: Some of those documents that are written  
15 by Mr. Faharro, but they may have already obtained them.

16 THE COURT: Well, look, I suppose it is theoretically  
17 possible that they wrote the whole decision awarding \$19  
18 billion against them and they paid off the judge to enter it so  
19 they can get it blown out of the water. I suppose it could  
20 happen, right?

21 MR. VESELKA: That is not what I said. I am not  
22 saying they knew what the amount would be. I believe I  
23 asserted all along we believe they knew from a year or two out  
24 as it was closing out that they thought the judge was going to  
25 rule against them. They thought it would be substantial so

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1 they were looking for ways to try to undercut --

2 THE COURT: Any time you come back do me with any  
3 evidence that suggests that I should give the slightest  
4 credence to this, I am prepared to reconsider, but no.

5 MR. VESELKA: So the purpose in looking for when Sproz  
6 Freiberg started working on that.

7 THE COURT: Terrific. No.

8 I have to give you credit for imagination on that, Mr.  
9 Veselka. I mean, really.

10 Anything else left?

11 MR. VESELKA: Two short ones.

12 THE COURT: Two short ones.

13 MR. VESELKA: The Court has a lunch.

14 THE COURT: I have the rest of the day, too, Mr.  
15 Veselka. I am prepared to stay.

16 MR. VESELKA: I am happy to get it over by lunch, your  
17 Honor.

18 THE COURT: I am sure everybody wants it over with.

19 MR. VESELKA: The next one --

20 THE COURT: We're going to have a discovery cliff  
21 here. I am told we're safe on the Mayan apocalypse. I am told  
22 it was midnight last night.

23 MR. VESELKA: The sun came up. We were wondering  
24 about it with the storm, but the sun did come up.

25 THE COURT: I am worried about the Mayan Y2K problem.

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1 MR. VESELKA: Your Honor, Exhibit 6 goes to dealings  
2 by Chevron with the filmmakers and the people involved with  
3 making of fruit.

4 THE COURT: On what theory?

5 MR. VESELKA: The question is trying to find out if  
6 there are threats that they made to those people to obtain  
7 information from them and/or if they have entered into any  
8 agreements with them that restrict their ability to testify  
9 truthfully as witnesses.

10 THE COURT: If you have anything that suggests  
11 probable cause to believe that happened, you take it right over  
12 to the U.S. Attorney's Office.

13 MR. VESELKA: All right.

14 THE COURT: Next?

15 MR. VESELKA: We had had information provided that --

16 THE COURT: Hey, if the U.S. Attorney's Office thinks  
17 it is credible, I am sure they will be the right thing.

18 Anything else?

19 MR. VESELKA: Yes. Exhibit 7, your Honor.

20 THE COURT: So to be clear Exhibits 5 and 6 the  
21 objections are sustained.

22 MR. VESELKA: Exhibit 7 is a mishmash of a number of  
23 different items, but they pertain in sense to two topics. One  
24 is the information regarding the Texaco Chevron merger as it  
25 relates to discussing knowledge of the risk or the

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1 litigation -- of risk from the contamination and existence of  
2 contamination and how that was assessed for purposes of making  
3 the decision to acquire.

4 THE COURT: That is relevant how?

5 MR. VESELKA: That is relevant how if in assessing  
6 this they had communication with the Republic of Ecuador and  
7 they say, Look, once we get this case, don't worry about the  
8 risk. Yes, they are seeking a lot of money and they say it is  
9 a lot of contamination and we know there is a lot of  
10 contamination, but we have an agreement with Republic if we get  
11 the case dismissed in New York and if it gets refiled down  
12 there, they will be able put a kibosh on it.

13 THE COURT: But I think Count 1 of your request under  
14 this heading asks for anything having to do with communications  
15 with the Republic of Ecuador.

16 MR. VESELKA: Those were elsewhere, but this is asking  
17 about the merger that particularly Mr. Scott was an official  
18 with Chevron and was active with regard to operations at that  
19 time and the dealings, met with a number of government  
20 officials.

21 THE COURT: What government? What official?

22 MR. VESELKA: The Republic of Ecuador. I am sorry.

23 THE COURT: So on that theory you want all documents  
24 from Mr. Scott about the Chevron litigations? What was his  
25 position?

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1 MR. VESELKA: He is in-house counsel and senior --  
2 senior vice-president for -- I am blanking. In-house counsel  
3 and a senior vice-president. Assistant general counsel and  
4 senior vice-president and was involved in dealing with the  
5 Republic of Ecuador and met with the presidents.

6 THE COURT: That is not what you are asking for here.  
7 You asked before and are getting boat loads of stuff involving  
8 communications of Chevron with the government of Ecuador.

9 MR. VESELKA: Right.

10 THE COURT: So you can't justify this by saying, Oh,  
11 it might be one from the Republic of Ecuador because we already  
12 determined the extent to which you are getting that.

13 MR. VESELKA: We believe that he was a person involved  
14 so he should have been -- one of the original -- I am sorry. I  
15 am blanking. Pertinent people, custodians.

16 THE COURT: I am missing something.

17 MR. JORALEMON: If I may be heard on this. Hopefully  
18 I can clarify. There are really two separate topics in this  
19 exhibit. First is the merger. Let's deal with that. The  
20 request concerning the merger are two and they are tied to  
21 specific custodians. It is Hugh Pate, the now general counsel  
22 for Chevron, and John Watson, the now chief executive officer.  
23 That is the extent of the merger related requests.

24 THE COURT: I see 211 is Pate.

25 MR. JORALEMON: Right. It is 211 and 212.



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1 THE COURT: I see. Go ahead.

2 MR. JORALEMON: So let's start with the subject of the  
3 merger. Your Honor has written extensively about this topic in  
4 this case. It is shocking that they have gone back to the well  
5 again when you've provided crystal clear guidance I think on  
6 the scope of relevance as it relates to the merger. We sort of  
7 rest on this Court's prior rulings on that.

8 With respect to the individuals identified here, Hugh  
9 Pate did not join Chevron until 2009. So why they would be  
10 asking about his files regarding a merger that happened eight,  
11 nine years prior is not clear to us.

12 THE COURT: Well, Mr. Veselka, let's take those two.

13 MR. VESELKA: Mr. Watson was the senior vice-president  
14 for business development at the time who was the business head  
15 for the merger. So he has actual firsthand knowledge of the  
16 consideration of the merger and how the potential liability or  
17 how they were dealing with that risk.

18 THE COURT: What does it have to do with this lawsuit?

19 MR. VESELKA: As part of that there were issues where  
20 they had a deal to try to preclude the litigation. It's  
21 another place to look for that information that we described  
22 earlier.

23 THE COURT: And which you are getting, right?

24 MR. VESELKA: Yes.

25 THE COURT: Therefore, a request for all documents

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1 regarding the merger is just a tad overbroad, wouldn't you say?

2 MR. VESELKA: It's one of the problems.

3 THE COURT: 211 and 212, objection sustained.

4 MR. WERDEGAR: Your Honor, just one point of  
5 clarification, which I think hasn't come out yet; but I think  
6 one of the things that was driving these requests from the  
7 codefendants is these are individuals, and Mr. Joralemon can  
8 correct me if I am wrong, these are individuals who are not  
9 listed within the universe of custodians that Chevron had  
10 agreed to collect documents from when Mr. Donziger served his  
11 requests. So I think the Ecuadorians plaintiffs reviewing what  
12 had already been done and what Chevron agreed to do and said,  
13 These are additional individuals we should be collecting from  
14 so we're going to seek discovery as to those individuals'  
15 files because they are in not within the universe that Chevron  
16 was going to produce in response?

17 THE COURT: Any problem, Mr. Joralemon --

18 MR. JORALEMON: Yes.

19 THE COURT: -- with adding those two individuals --

20 MR. JORALEMON: Yes, your Honor.

21 THE COURT: Just a moment.

22 MR. JORALEMON: Sorry.

23 THE COURT: -- with respect to those specifications  
24 dealing with communications between Chevron and the Republic of  
25 Ecuador that have been sustained and that is that I have

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1 allowed you to go forward?

2 MR. JORALEMON: Certainly. I think this might be  
3 captured within the broader issue of the custodians, your  
4 Honor.

5 THE COURT: Well, I don't know about the broader  
6 issue.

7 MR. JORALEMON: With your permission I would like to  
8 address that. I hesitate to go back to the Court what it has  
9 already said, but two days ago again in the decision on the  
10 third party subpoenas, your Honor noted that the subpoenas  
11 themselves raised a substantial issue as to the good faith and  
12 I think that applies here as well.

13 Now, let me give you the background. Again, this is  
14 very important, your Honor. At the beginning of this year as  
15 you noted the other party has had access, an ability to serve  
16 requests for the entire year now almost. Earlier this year you  
17 asked the parties to submit a joint report on the status of  
18 discovery. We did that on March 7th. In that report Chevron  
19 laid out very clearly how it was going to approach collecting  
20 and producing documents, including identifying the specific  
21 sets of custodians and common sources. We also included in  
22 that joint report the good faith offer that if after reviewing  
23 our production they thought there was someone missing that  
24 would have noncumulative, nonprivileged materials they can come  
25 back and ask for that and we would consider that. We proceeded

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1 with that discovery. Donziger and Stratus have not objected to  
2 that approach. We have had productive meet and confers about  
3 that and that is where we stand today having produced three  
4 million dollars.

5 Here come the LAPs six weeks before the close of fact  
6 discovery serving 240 requests and saying, By the way, we want  
7 all of your CEO's documents, ignoring the process they had set  
8 up nine months earlier about how we're going to approach this  
9 and thinking that they are just going to come in and say give  
10 us all your general counsel's files and your CEO's files. So  
11 there is the issue of good faith.

12 Now, let's look at the substance of this. There are  
13 four individuals they identified -- the CEO, the general  
14 counsel, Kari Endries who is a corporate secretary who has  
15 nothing to do with the underlying litigation. She signed the;  
16 interrogatory responses after spending time with the lawyers  
17 and Scott who is a lawyer, in-house lawyer. Chevron is  
18 producing files from 17 lawyers, your Honor, including 60 from  
19 outside counsel in Ecuador. For Mr. Veselka to blunder-bust  
20 say, Give us the general counsel's files without any  
21 consideration of the framework we set up or whether any  
22 consideration, there has something nonduplicative in Pate's  
23 file that wouldn't otherwise be privilege from what we're  
24 giving them doesn't make any sense from Chevron's perspective.

25 MR. VESELKA: We've talked about the merger and one

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1 other sort of category focused on this is outside  
2 communications. Mr. Watson --

3 THE COURT: Before we get to that, let's stick with  
4 what we're dealing with.

5 MR. VESELKA: As to custodians when we looked at the  
6 list, remember that our discovery was served later because we  
7 did not want to prejudice our context of personal jurisdiction.

8 THE COURT: You keep saying that, but without in any  
9 way trying to being critical of you and God knows who made the  
10 decision, there is no merit to that argument at all. It's just  
11 an excuse.

12 MR. VESELKA: They were then issued and as we did that  
13 and we looked at the custodians and it didn't include Mr. Scott  
14 who has been active and involved, attended meetings with two or  
15 three different presidents, attended meetings with various  
16 ministers. So he had been active so we thought he ought to be  
17 a custodian.

18 Mr. Watson not only was the person in charge of  
19 selling to the board the merger and has made numerous public  
20 statements, specific statements on this case about the merits  
21 referring to the lawyers, including present counsel as  
22 criminals. So we wanted to see evidence about what public  
23 statements he has made. So Ms. Endries signed interrogatories  
24 with regard to the merger in Count Nine so we assumed she had  
25 information about the merger so that is why we thought -- she

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1 was listed as a custodian.

2 THE COURT: In your Exhibit 7 21 of 23 on the ECF  
3 numbering, the ostensible justification for this request is  
4 that Chevron as characterized the Lago Agrio case as sham  
5 litigation and you then suggest that the reason you want the  
6 information is because Chevron's assessment of potential  
7 liability in Ecuador would be somehow relevant to be accurate  
8 at the time of the acquisition would be somehow relevant to the  
9 veracity of the sham litigation assertion. That is the theory,  
10 right? Is that right?

11 MR. VESELKA: That theory about how he assessed the  
12 liability and/or how it might get resolved in order to reduce  
13 that risk, yes.

14 THE COURT: Well, that second part, that is not  
15 anything you wrote here.

16 MR. VESELKA: I did not.

17 THE COURT: Maybe it is. You referred to containing  
18 the risk, which involves dealing with the Republic of Ecuador  
19 and we have already covered that, right?

20 MR. VESELKA: I now understand the Court has given a  
21 ruling and we will get certain information about the dealings.

22 THE COURT: Absolutely.

23 MR. VESELKA: We will cover that.

24 THE COURT: So we're now back to two things. We're  
25 back to somehow their assessment of the risk goes to the

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1 varsity of the assertions that it is a sham litigation and as  
2 to that Mr. Mastro has singled about as strongly as he signals  
3 things that they will define what they mean by "sham  
4 litigation" and I rather imagine this one disappears to the  
5 extent it rests on that theory.

6 Now, then the other question is the question of the  
7 document custodians and what I am taking from this -- now the  
8 document custodians with respect to the search for all the  
9 documents, not just this one, right?

10 MR. JORALEMON: Correct, your Honor.

11 THE COURT: And what I am getting is there was an  
12 agreed framework for what the scope of the search was to be in  
13 responding to these document requests. Did I understand that  
14 correctly?

15 MR. JORALEMON: I imagine anticipating Mr. Werdegar's  
16 response would be a nonobjectionable framework that Chevron  
17 since February has put out there and continued to abide by.  
18 They haven't objected to it.

19 MR. VESELKA: They said that is what they were doing  
20 and we did not ever agree that would be the only custodians  
21 because, well, we were going to look and see but we did not  
22 object.

23 THE COURT: What is it you were going to look and see?

24 MR. VESELKA: We were going to see what came out of  
25 that production first.

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1 THE COURT: Before what?

2 MR. VESELKA: Back at the time we thought things were  
3 moving more quickly.

4 THE COURT: I am sorry disappoint you.

5 MR. VESELKA: No. Because the parties trying to work  
6 through this so far and with the various other motions that  
7 came up, it got us off course.

8 MR. WERDEGAR: The framework, your Honor, was here are  
9 the proposed custodians we're willing to search for, here are  
10 the repositories and the arrangement -- the working  
11 understandings at our meet and confers has been you are  
12 searching within here if either we in reviewing documents or  
13 material determine that you are missing someone we think should  
14 be on there, we get to ask you, we can have a discussion, you  
15 don't have to agree, we can ask you to add to it. And also if  
16 they in their review also uncover, Hey, we missed someone in  
17 our initial list, they have a good faith obligation to say,  
18 Hey, we are going to add someone. It was never meant to be the  
19 exclusive list for all time.

20 THE COURT: I see. The guy that you never suggested  
21 to them until Mr. Veselka six weeks ago served his document  
22 request, and "you" I mean both of you, and who never occurred  
23 to you by somebody who should have been on the list was the  
24 CEO, that is the one you missioned, the CEO and the general  
25 counsel?



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1 MR. WERDEGAR: Well, your Honor, I don't think that is  
2 entirely an accurate characterization as this played out.  
3 Chevron's document production is ongoing and their production  
4 of documents that documents other than them reproducing  
5 materials they got in various 1782s only started happening  
6 recently. I think late October is when we first got Chevron  
7 custodian materials. So we haven't had an opportunity go  
8 through all this stuff. I think the concern was as the  
9 discovery cutoff was arriving, we didn't make sure we had  
10 covered our bases with respect to custodians because these  
11 individuals were not on the list.

12 Now, they were served by the LAPs, but that was  
13 concern driving it, is that these were not custodians listed.  
14 We hadn't had the opportunity to fully review the production,  
15 but we wanted to the make sure we had some coverage with  
16 respect to these individuals.

17 MR. VESELKA: And, your Honor, we want to get them in,  
18 particularly address merger and they had these public  
19 statements to various outside folks talking about the case  
20 where they are characterizing the case we think sometimes  
21 inappropriately.

22 THE COURT: Well, I am sure they think everything you  
23 guys have said is inappropriate, too.

24 MR. VESELKA: That's right.

25 THE COURT: I don't think we're going to have that

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1 litigation.

2 MR. VESELKA: Not in this case. So as to those topics  
3 in the working assumption between the parties that we're  
4 working on with regard to privilege is that so much of their --  
5 the privilege work as opposed to outside statements or  
6 statements outside of that is going to be exempt. It was not  
7 going to be a burden. We're working on our protocol to have  
8 their counsel's conversations in this case. They wouldn't need  
9 to bother at all. It was not perceived as being burdensome.

10 MR. JORALEMON: Your Honor, may I?

11 THE COURT: Yes.

12 MR. JORALEMON: Very briefly. I am troubled by what  
13 Mr. Werdegar has said and here is why: Since February Chevron  
14 has said to all defendants if you think someone should be on  
15 the list, come to us and explain to us why you think they  
16 should be on the list, specifically are they going to have  
17 nonduplicative or cumulative materials that are not otherwise  
18 privileged, and we'll consider it in good faith. That has been  
19 our standing offer. It has been in the joint report submitted  
20 to this Court. It has been in our meet and confer  
21 correspondence to the Donziger defendants throughout. And now  
22 I am here from Mr. Werdegar while those meet and confers were  
23 going on, he was drafting the LAP's requests six weeks before  
24 the close of fact discovery. He didn't want to come to me and  
25 say, Hey, we think Watson should be on the list. That should

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1 be in the LAP's request.

2 THE COURT: Look, let's try the problem solvers not  
3 problem creators.

4 MR. JORALEMON: Yes.

5 MR. WERDEGAR: Your Honor, that mischaracterized what  
6 I just said.

7 THE COURT: Enough of who shot John for now.

8 MR. VESELKA: As to the merger, they were agreeing to  
9 produce very limited -- people who he knew who were directly  
10 involved in the merger we put on this list.

11 THE COURT: Look, it is my working hypothesis that  
12 this sham litigation argument is going to go away because you  
13 are going to resolve it by virtue of Chevron stating more  
14 specifically what their allegation is and what it isn't. So to  
15 the extent these requests are sought to be justified on the  
16 ground that they go to the varsity of the sham litigation  
17 argument, I am just not going to deal with it now.

18 The other statement in the document submitted by the  
19 Lago Agrio claims is that they are looking for stuff about  
20 containment of the risk through dealings with the Republic of  
21 Ecuador. It strikes me that the appropriate way of dealing  
22 with that is to modify these requests to call for  
23 communications with the Republic of Ecuador about how to  
24 contain the risk of liability to Chevron as a result of Lago  
25 Agrio litigation and for that purpose the universe of

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1       custodians would be Watson, Pate and Scott.

2               Now, I am sure nobody is happy with that and by in  
3       this respect proposing to alter the list of custodians, I am  
4       not necessarily rejecting the argument that Mr. Joralemon is  
5       making about the manner in which discovery was being conducted,  
6       but does that solve this problem in a way that everybody can  
7       live with?

8               MR. VESELKA: That certainly solves the problem from  
9       210 down, your Honor. They are the first things you are  
10      dealing with. Communications with the Chamber of Commerce and  
11      ACTL are the dealings with them that led to Mr. Donahue -- he  
12      issued a statement about some litigation that mischaracterized  
13      this litigation in a way in trying to see whether Chevron had  
14      mischaracterized anything.

15              THE COURT: We'll deal with those after lunch. Maybe  
16      you can come up with a more eloquent solution.

17              MR. VESELKA: Your Honor, the Donziger motions is  
18      concluded. I am asking if I can be excused to try it make my  
19      airplane. I don't think I need to weigh in on anything  
20      further.

21              THE COURT: That is your call. If you wish to be, you  
22      are. I wish you very happy holiday and a good New Years'.

23              MR. MASTRO: Thank you, your Honor. Mr. Joralemon  
24      will be here this afternoon. So happy holidays to you.

25              THE COURT: Everybody is heading for the country.

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1 MR. MASTRO: Your Honor, I am not actually. I am  
2 heading to the U.S. Attorney's Office.

3 THE COURT: Okay.

4 MR. WERDEGAR: When are you planing to reconvene?

5 THE COURT: Thank you. I am going to shoot for 2:00.

6 MR. MASTRO: Thank you, your Honor.

7 MR. WERDEGAR: If I am not here, your Honor, happy  
8 holidays.

9 (Luncheon recess)

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Hearing

## AFTERNOON SESSION

2:05 p.m.

THE COURT: OK. Well, we've certainly lost the audience. I don't know. It must be me. What's up, guys?

MR. VESELKA: The two remaining on Exhibit 7 that you've not already dealt with are 208 and 209, we will withdraw those, your Honor.

THE COURT: Well, that's a solution. Good.

MR. VESELKA: And that's everything.

THE COURT: That's everything. Well, excellent. So we have --

MR. JORALEMON: Your Honor, yes.

THE COURT: So, we have a qualification.

MR. JORALEMON: Yes. A minor qualification about Exhibit 7 and this relates to the custodial issue.

THE COURT: You resolved that point between you.

MR. JORALEMON: Well, the Court resolved it, actually, in the problem solving mode. And we appreciate that effort and the limited focus of extolling documents with respect to Messieurs Page, Watson and Scott.

I just wanted to note for the record, your Honor, really express a concern that what Chevron does not what to have happen is have this be a toll hold by which defendants unravel the nine month frame framework under which we were operating where we had said back in March this is the universe.

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Hearing

1 This is what we're searching. If you have a good faith basis  
2 to go beyond that for non duplicative stuff, we'll consider it.  
3 So, I just wanted to sort of flag that issue for counsel and  
4 for your Honor.

5 MR. VESELKA: We had looked as preparedly and these  
6 were the ones that we found that and that's why to get them in  
7 we got them in. We're not looking to go look for others. So,  
8 I understand and we agree that that's the concept of where we  
9 are.

10 THE COURT: OK. Excellent. OK. I think that does  
11 it. Well, I repeat my expressions of appreciation from this  
12 morning. I wish everybody a wonderful Christmas or whatever  
13 you celebrate and the happiest and best possible new year.

14 MR. JORALEMON: Thank you, your Honor.

15 Just one personal note. Some 15 years ago my first  
16 court appearance as an attorney was before your Honor, so it  
17 was great to be back here today. I imagine that appearance was  
18 more memorable for me than it was for you.

19 THE COURT: I could dissemble and say that I remember  
20 it vividly but everybody would know that I was dissembling. So  
21 I certainly won't even think of it. But one of the nice things  
22 about doing what I do is that one sees a great many very bright  
23 young lawyers starting in the profession and maturing and  
24 gaining skills and judgment and talent. And I have no doubt  
25 based on the last couple of days think that is true in your

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Hearing

1 case as it is in some others. So thank you all.

2 (Adjourned)

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